

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
2 THIRD JUDICIAL DISTRICT AT ANCHORAGE  
3

4 ALASKA STATE EMPLOYEES )  
5 ASSOCIATION, LOCAL 52, )

6 Plaintiff, )

7 vs. )

8 STATE OF ALASKA; )  
9 DEPARTMENT OF HEALTH & )  
10 SOCIAL SERVICES; DEPARTMENT )  
11 OF ADMINISTRATION; OFFICE of )  
12 GOVERNOR MICHAEL J. DUNLEAVY, )

13 Defendants. )

Case No. 3AN-19-06327 CI

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APR 15 2019

Clerk of the Trial Courts

14 **ASEA'S MOTION FOR TEMPORARY RESTRAINING ORDER**  
15 **AND PRELIMINARY INJUNCTION**

16 The Alaska State Employees Association, Local 52 ("Union") moves this Court  
17 for a temporary restraining order and a preliminary injunction, enjoining the State of  
18 Alaska from continuing its contract with Wellpath Recovery Solutions, LLC  
19 ("Wellpath") until the State of Alaska has cured its violation of the Union's Collective  
20 Bargaining Agreement ("CBA").  
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22 **I. INTRODUCTION**  
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24 The Union is a labor organization that represents public employees, including  
25 approximately 211 employees who work for the State of Alaska at the Alaska Psychiatric  
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1 Institute (“API”).<sup>1</sup> On April 15, 2019, the Union filed a Complaint in Alaska Superior  
2 Court, alleging that the State of Alaska<sup>2</sup> breached the Union’s CBA. If not enjoined  
3 immediately, the State of Alaska’s breach of the CBA will cause the Union and the  
4 employees it represents irreparable harm.  
5

6 First, time is of the essence. The State of Alaska’s decision to contract with  
7 Wellpath deprives the Union of mandatory rights under the CBA to receive, review, and  
8 respond to a feasibility study **prior to** any decision by the State of Alaska to contract out  
9 and privatize API. Article 13 of the CBA, described at length below, provides, in part,  
10 that the State of Alaska’s decision to contract out “shall be made only after the affected  
11 agency has conducted a written feasibility study” that “shall include all costs including,  
12 but not limited to, wages, benefits, administrative costs, agency overhead, program  
13 supervision, and audits.”<sup>3</sup> Under the CBA, that feasibility study and notice to the Union  
14 triggers the Union’s right to respond in (at the least) 30 days to any decision to contract  
15 out with its own plan, and precludes the State of Alaska from releasing any bids or  
16 contracting with any other party during that time period and until the Union’s alternative  
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22 <sup>1</sup> Metcalfe Aff., April 15, 2019 at ¶ 1.

23 <sup>2</sup> “State of Alaska” includes the Department of Health and Social Services, the  
24 Department of Administration and the Office of Governor Michael Dunleavy.

25 <sup>3</sup> Exhibit A, Excerpts from the CBA between the Union and the State of Alaska  
26 covering the General Government Bargaining Unit, July 1, 2016 through June 30, 2019 at  
Article 13, section 13.01 B. Metcalfe Aff. at ¶ 3.

1 plan receives fair consideration.<sup>4</sup> The State of Alaska has violated these mandatory CBA  
2 provisions.

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4 If this Court does not immediately enjoin the State of Alaska from continuing its  
5 contract with Wellpath the Union will be forever deprived of its right to submit an  
6 alternative plan related to the State of Alaska's decision to privatize or contract out the  
7 operations of API. The State of Alaska failed to complete a feasibility study prior to  
8 contracting with Wellpath, and does not expect to complete or provide any such study to  
9 the Union until some yet-to-be-determined date.<sup>5</sup> In fact, the procurement and contract  
10 for the study is not completed or even issued yet.<sup>6</sup> There is no indication when the  
11 feasibility study will take place, or even if it will be a meaningful study.

12  
13 While the State of Alaska has pushed back the date for Wellpath to assume full  
14 operational control (privatization) over API from July 1, 2019 to September 1, 2019 and  
15 has stated its intent to complete a feasibility study,<sup>7</sup> the State of Alaska's contract with  
16 Wellpath continues.<sup>8</sup> Recent documents disclosed by the State of Alaska establish that  
17 Wellpath's milestones under what is called the "transition phase" (currently ongoing)  
18 include finalizing selection of staff, interviewing and orienting "all employees,"  
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22 <sup>4</sup> Exhibit A at 13.01 C. 1-3.

23 <sup>5</sup> Metcalfe Aff. at ¶¶ 4-5.

24 <sup>6</sup> *Id.*; Exhibit B, Emails between Deputy Commissioner Albert Wall, Jake Metcalfe  
and others, March 2019.

25 <sup>7</sup> Metcalfe Aff. at ¶ 6.

1 negotiating shared service agreements, and onboarding and training all staff.<sup>9</sup> In other  
2 words, the State of Alaska and Wellpath are moving towards total privatization of API  
3 even though the State of Alaska has not complied with the CBA. If this Court does not  
4 enjoin such acts, the Union will lose members, and any ability to submit an alternative  
5 plan and will lose the rights the State of Alaska and the Union agreed to under the CBA.<sup>10</sup>  
6 Wellpath is becoming more entrenched at API, making it impossible for the Union to  
7 submit an alternate plan under the CBA that receives “fair consideration.”<sup>11</sup> This  
8 constitutes irreparable harm that cannot be avoided without court intervention.  
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11 Second, there should be no dispute that the State of Alaska violated the CBA, and  
12 continues to violate the CBA by continuing its contract with Wellpath. The Union has a  
13 substantial likelihood of success on the merits regarding its claims that the State of  
14 Alaska breached the CBA by failing to comply with Article 13, breached the covenant of  
15 good faith and fair dealing, and anticipatorily breached the Collective Bargaining  
16 Agreement ratified by the State of Alaska and the Union, currently awaiting legislative  
17 funding and set to take effect on July 1, 2019 (“Ratified CBA”).<sup>12</sup>  
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21 <sup>8</sup> Exhibit B.

22 <sup>9</sup> Exhibit C, Alaska Psychiatric Institute, High Level Transition Timeline:  
23 Milestones (0331).

24 <sup>10</sup> Metcalfe Aff. at ¶ 7.

25 <sup>11</sup> Exhibit A at Article 13, Section 13.01 C; Metcalfe Aff. at ¶ 9.

<sup>12</sup> Metcalfe Aff. at ¶ 2; *see generally* AS 23.30.215.

1 In preparation for filing its Complaint and this motion practice, the undersigned  
2 contacted an attorney with the State of Alaska who represents the Department of Health  
3 & Social Services (“DHSS”).<sup>13</sup> The undersigned informed the DHSS about this motion  
4 practice, including the specific requested injunctive relief and the Complaint, and expects  
5 that the State of Alaska will enter an appearance in the next day or soon after in order to  
6 brief the requested injunctive relief.<sup>14</sup> The undersigned also served the attorney via email  
7 and also served the State of Alaska’s Attorney General via hand-delivery.<sup>15</sup>

## 10 **II. LEGAL STANDARD**

11 Under Alaska law, a “[p]laintiff may obtain a preliminary injunction by meeting  
12 either the balance of hardships or the probable success on the merits standard.”<sup>16</sup> The  
13 showing required to obtain a preliminary injunction depends on the nature of the  
14 threatened injury.<sup>17</sup> The balance of hardship standard applies when a party establishes  
15 three factors (1) the plaintiff is faced with irreparable harm, (2) the opposing party is  
16 adequately protected, and (3) the plaintiff raises “serious and substantial questions going  
17 to the merits of the case” establishing that the issues raised are not “frivolous or  
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22 <sup>13</sup> Brown Aff., April 15, 2019 at ¶ 2.

23 <sup>14</sup> *Id.*

24 <sup>15</sup> *Id.*

25 <sup>16</sup> *Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014).

26 <sup>17</sup> *See State, Div. of Elections v. Metcalfe*, 110 P.3d 976, 978 (Alaska 2005).

1 obviously without merit.”<sup>18</sup> In weighing the potential hardships to each party, this Court  
2 is required to “[a]ssume the plaintiff will ultimately prevail when assessing the  
3 irreparable harm to the plaintiff absent the injunction,” and also conversely “[a]ssume the  
4 defendant ultimately will prevail when assessing the harm to the defendant from the  
5 injunction.”<sup>19</sup> When irreparable harm is not found, the much higher standard or probable  
6 success on the merits must be established before an injunction can be issued.<sup>20</sup>  
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8 The Union’s claim satisfies all criteria for injunctive relief. If this Court does not  
9 issue an injunction, the Union will be irreparably harmed as the State of Alaska and  
10 Wellpath are moving toward hiring staff and transitioning to the full privatization of API  
11 without first completing a feasibility study and allowing the Union to submit an  
12 alternative plan, as required by the CBA. There is no harm to the State of Alaska in  
13 maintaining the status quo at API.  
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16 **III. BACKGROUND FACTS**

17 **A. The Wellpath Contract with the State of Alaska.**

18 On February 8, 2019, the DHSS Commissioner Adam Crum announced that he  
19 had “invoked his authority under state law to immediately assume management of  
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23 <sup>18</sup> *Alsworth*, 323 P.3d at 54.

24 <sup>19</sup> *Id.*

25 <sup>20</sup> *City of Kenai v. Friends of Recreation Ctr., Inc.*, 129 P.3d 452 (Alaska 2006).

1 [API].”<sup>21</sup> The day prior, on February 7, 2019, the State of Alaska, through its  
2 Department of Administration (“DOA”) and Chief Procurement Officer Jason Soza,  
3 approved a single-source contract under its procurement code, allowing Wellpath to take  
4 over the management of API (“Wellpath Contract”).<sup>22</sup> The Wellpath Contract is divided  
5 into two phases, including a “Startup” phase (“Phase 1”) from February 8, 2019 through  
6 June 30, 2019, and an “Ongoing Operations” phase (“Phase 2”), from July 1, 2019 (called  
7 the “Operation Date”) through June 30, 2024.<sup>23</sup> Phase 2 includes complete privatization  
8 of API. According to the Wellpath Contract, the terms and conditions of Phase 2 will be  
9 “negotiated and reflected in an amendment prior to June 30, 2019.”<sup>24</sup>  
10

11 The Wellpath Contract includes a term called “Completion of Phase 1,” which  
12 provides that on or before April 15, 2019, the State of Alaska will “engage in  
13 negotiations to amend this agreement and outline the terms described in Phase 2:  
14 Ongoing Operations.”<sup>25</sup> The Wellpath Contract states that in order to operate API during  
15 Phase 2, Wellpath must satisfy benchmarks, including API’s continued compliance with  
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19 <sup>21</sup> Exhibit D, State of Alaska Press Release, “Commissioner Assumes Management  
20 of Alaska Psychiatric Institute; Changes Will Improve Patient and Staff Safety,” Feb. 8,  
21 2009; Complaint, filed by the Union against the State of Alaska, April 15, 2019  
at 4, ¶ 10.

22 <sup>22</sup> Exhibit E, Standard Agreement Form for Professional Services between the State  
23 of Alaska and Wellpath Recovery Solutions, LLC, Feb. 8, 2019 (“Wellpath Contract”).

24 <sup>23</sup> *Id.* at 6.

25 <sup>24</sup> *Id.*

26 <sup>25</sup> *Id.*

1 applicable licensing, accreditation and regulatory requirements, a promise that API's  
2 80 beds will be "fully available for utilization" and that API be "staffed by the necessary  
3 clinical and support staff."<sup>26</sup> According to the Wellpath Contract, Wellpath is not  
4 responsible for the operations of API during Phase 1, but that the parties contemplate  
5 "Wellpath being prepared to assume responsibility as of the commencement of the  
6 Operation Date, on July 1, 2019."<sup>27</sup>

8 The Wellpath Contract states that current employees will "remain the financial  
9 responsibility of the State" during Phase 1, but that effective on the "Operations Date,  
10 existing State employees at API shall be eligible to apply for rehire with Wellpath and  
11 have preference in that process."<sup>28</sup> The Wellpath Contract further obligates Wellpath to

12 honor terms & conditions of existing contracts that API is currently  
13 engaged in. Requests for termination or adjustment to any contract must be  
14 presented to the State, in writing, for approval, along with a proposal for the  
15 amendment / termination that exhibits adherence to the terms & conditions  
16 of these contracts. The State will remain financially responsible for the  
17 costs of services provided under these contracts during Phase 1.<sup>29</sup>

18 Even so, the Wellpath Contract contemplates hiring employees for jobs currently held by  
19 Union members, and covered by the CBA during Phase 1.<sup>30</sup>

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22 <sup>26</sup> *Id.*

23 <sup>27</sup> *Id.* at 7.

24 <sup>28</sup> *Id.*

25 <sup>29</sup> *Id.*

26 <sup>30</sup> *Id.* at 6, 9-11 (Appendix C – Exhibit 1, Staffing Plan).



1 At some point in the last two or three weeks, the State of Alaska, through its  
2 Deputy Commissioner Albert Wall, announced that it would extend Phase 1 of the  
3 Wellpath Contract to allow the State of Alaska to obtain a feasibility study related to its  
4 plans to privatize API.<sup>31</sup> That extension is not in the Wellpath Contract, or other contract  
5 documents made publicly available.<sup>32</sup> Regardless, that extension appears to extend some  
6 of the deadlines for specific tasks by Wellpath, including the April 15 deadline, which is  
7 now moved to June 15, and the July 1 deadline or Operation Date, which is now  
8 apparently moved to September 1, 2019.<sup>33</sup>

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11 But Wellpath and the State of Alaska continue to move towards total privatization  
12 of API. In documents recently disclosed by the State of Alaska in response to a public  
13 records request, the State of Alaska produced a document called “High Level Transition  
14 Timeline: Milestones,” indicating a roadmap to total privatization.<sup>34</sup> That document  
15 describes the “key milestones” under the Wellpath Contract and its original internal  
16 deadlines (before the apparent extensions), clearly converting all Union members to  
17 private Wellpath employees.<sup>35</sup>

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22 <sup>31</sup> Exhibit B; Metcalfe Aff. at ¶ 6.

23 <sup>32</sup> Brown Aff. at ¶ 3.

24 <sup>33</sup> Exhibit B; Metcalfe Aff. at ¶ 6.

25 <sup>34</sup> Exhibit C.

26 <sup>35</sup> *Id.*

1 At different times over the last eight weeks since Wellpath engaged in Phase 1 at  
2 API, Wellpath and other State of Alaska employees have

- 3 • Informed Union members that following the Operations Date Wellpath will  
4 continue the salaries of current Union members for six months, and then will  
5 reevaluate and possibly reduce salaries;<sup>36</sup>
- 6 • At different town meetings, told Union members that no one will lose their  
7 jobs, but then announced that no one's job is certain or safe;<sup>37</sup>
- 8 • Modified schedules of current Union employees, including demanding that  
9 certain employees return to work on days off, refusing to make informational  
10 meetings available via video, causing Union members to return to work on  
11 days off to hear updates regarding their jobs;<sup>38</sup>
- 12 • Informed Union members that it would circulate information about hiring on  
13 with Wellpath, including human resources and benefits information, and then  
14 failed to do so;<sup>39</sup>
- 15 • Pushed back the timeline related to current Union members' status as State of  
16 Alaska employees, including most recently an announcement regarding the  
17 Operations Date for the Wellpath Contract, changing the date from July 1,  
18 2019 to September 1, 2019;
- 19 • Modified the April 15, 2019 deadline in the Wellpath Contract again in  
20 testimony before the Legislature, identifying new dates and new deadlines for  
21 the Operations Date.<sup>40</sup>

22 <sup>36</sup> Brown Aff. at ¶ 4.

23 <sup>37</sup> *Id.*

24 <sup>38</sup> *Id.*

25 <sup>39</sup> *Id.*

26 <sup>40</sup> Metcalfe Aff. at ¶ 6; Exhibit B.

1 The changes have left Union members in flux, not knowing the status and security  
2 of their job and existing benefits, including those articulated in the CBA and the Ratified  
3 CBA.<sup>41</sup>

4  
5 **B. The Single-Source Procurement.**

6 The State of Alaska, through DHSS, signed a DHSS Authority to Seek  
7 Professional Services on February 7, 2019, and submitted a Request for Alternate  
8 Procurement (“RAP”).<sup>42</sup> The RAP eventually sought and received authority for a single-  
9 source contract for Wellpath at an estimated cost of \$84 million.<sup>43</sup> Attachments to the  
10 RAP include emails to and from DHSS leadership explaining the reasons for the RAP  
11 and the requested contract with Wellpath.<sup>44</sup> The RAP, and the statements DHSS  
12 executives have made to obtain the Wellpath Contract, have come under scrutiny by  
13 legislators for the last two months. That process has established that the State of Alaska  
14 intended to have Wellpath take over API completely starting in December 2018, soon  
15 after Governor Michael Dunleavy’s election,<sup>45</sup> and ignored letters that establish the  
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21 <sup>41</sup> Metcalfe Aff. at ¶ 7.

22 <sup>42</sup> Exhibit F, Request for Alternative Procurement (“RAP”), Feb. 7, 2019 (without  
23 exhibits).

24 <sup>43</sup> *Id.* at 5.

25 <sup>44</sup> Complaint at 8-11.

26 <sup>45</sup> *Id.*

1 existence of other available vendors, including Providence Health & Services Alaska.<sup>46</sup>  
2 In early April, the Alaska State Legislature, House of Representatives, sent a letter to  
3 Jason Soza, the State of Alaska's chief procurement officer, and asked him to terminate  
4 Phase 2 of the Wellpath Contract for various reasons, including that the State of Alaska,  
5 through DHSS circumvented the procurement process in order to facilitate "permanent  
6 transfer of API management to Wellpath" without competitive bidding.<sup>47</sup>  
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8 Moreover, on February 20, 2019 (days after the State of Alaska finalized the  
9 Wellpath Contract) the Center for Medicare and Medicaid Services ("CMS") approved  
10 the API Plan of Correction (submitted without reference to Wellpath) on or about  
11 February 20, 2019. As a result, API is not in jeopardy of losing its certification or federal  
12 funding. On April 12, 2019, in a press release, Comm. Crum announced that The Joint  
13 Commission determined API meets or exceeds Medicare and Medicaid requirements,  
14 providing a "deemed status" to API for three years.<sup>48</sup> Comm. Crum credits the State of  
15 Alaska's decision to contract with Wellpath as a basis for accreditation, but The Joint  
16 Commission issued its decision effective December 15, 2018, before Wellpath's presence  
17 at API, and conducted its last onsite survey on January 29, 2019 prior to the Wellpath  
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23 <sup>46</sup> *Id.* at 11; Exhibit G, Letter from Alaska State Legislature to Jason Soza, at March  
24 6, 2019 Letter from Preston M. Simmons, Chief Executive, Alaska, Providence Health &  
Services Alaska to Representatives Ivy Spohnholz and Tiffany Zulkosky.

25 <sup>47</sup> Exhibit G.

1 Contract.<sup>49</sup> It is false for the State of Alaska to give credit to Wellpath for the CMS  
2 certification or The Joint Commission accreditation.

3  
4 **C. The CBA and the Ratified CBA.**

5 The State of Alaska and the Union entered into a CBA, effective July 1, 2016  
6 through June 30, 2019.<sup>50</sup> The CBA between the Union and the State of Alaska covers  
7 employees designated by the Alaska Labor Relations Agency as a General Government  
8 Unit (“GGU”) position.<sup>51</sup> Under the CBA, the State of Alaska agreed to mandatory terms  
9 regarding contracting out any GGU position.<sup>52</sup> Those promises are described in “Article  
10 13 – Contracting Out” of the CBA, which states, in part:  
11

12 Decisions to contract out shall be made only after the affected agency has  
13 conducted a written feasibility study determining the potential costs and  
14 benefits that would result from contracting out the work in question. The  
15 study shall include all costs associated with contracting out the work in  
16 question including, but not limited to, wages, benefits, administrative costs,  
17 agency overhead, program supervision, and audits.<sup>53</sup>

18 Article 13.01(C) of the CBA states:  
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20 <sup>48</sup> Exhibit H, State of Alaska Press Release, “API Accreditation Renewed by the  
21 Joint Commission,” April 12, 2019; Exhibit I, Email from Gavin Carmichael, April 8,  
22 2019 to API staff.

23 <sup>49</sup> Exhibit J, Quality Report, The Joint Commission, reflecting “deemed status” for  
24 API.

25 <sup>50</sup> Exhibit A.

26 <sup>51</sup> *Id.* at 6.

<sup>52</sup> *Id.*

<sup>53</sup> Exhibit A at 29. 13.01(B).

1. The Employer shall notify the Union of its final decision regarding contracting out. A copy of the study will be provided to the Union.
2. If the Employer decides to contract out and such contracting out will result in the displacement of employees, the Employer shall provide the Union with no less than thirty (30) calendar days' notice that it intends to contract out bargaining unit work. The notification by the Employer to ASEA of the results of the feasibility study will include all information on which it based its decision to contract out the work, including the total cost savings the Employer anticipates.
3. The Union may then submit an alternate plan that is to include potential costs and benefits. During this thirty (30) day calendar period the Employer shall not release any bids and ASEA shall have the opportunity to submit an alternate plan that will be given full consideration by Employer. During this thirty (30) calendar day period, the Union shall have the opportunity to discuss the placement of affected employees.

The Ratified CBA includes nearly identical mandatory terms.<sup>54</sup>

It is undisputed that the State of Alaska did not complete a feasibility study prior to contracting with Wellpath, as required by the CBA. Wellpath still has not completed the feasibility study. Moreover, the only feasibility study that exists (procured and completed in 2017 under Governor Bill Walker's administration) establishes that privatization of API will result in diminished safety and quality of services for staff and patients.<sup>55</sup>

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<sup>54</sup> Metcalfe Aff. at ¶ 3.

<sup>55</sup> Exhibit K, Excerpts from the Feasibility Study of the Privatization of the Alaska Psychiatric Institute, Final Report, Feb. 23, 2017 at 1-5.

1 In response to the State of Alaska's breach of the CBA, the Union filed a  
2 grievance.<sup>56</sup> That claim is currently scheduled for hearing in mid-June, around or near  
3 the time the State of Alaska will presumably (under the new deadlines) enter into the  
4 final contract negotiations regarding Phase 2 or total privatization of API.<sup>57</sup> The relief  
5 from that grievance proceeding is inadequate, and will not provide any basis for the  
6 Union to be made whole.<sup>58</sup>

#### 8 **IV. ARGUMENT**

9  
10 This Court should issue an injunction. The Union has a substantial likelihood of  
11 success because the State of Alaska breached the CBA contracting with Wellpath without  
12 first conducting and completing the feasibility study required by Article 13 of the CBA,  
13 and by entering into the Wellpath Contract before allowing the Union an opportunity to  
14 review the feasibility study and present an alternate plan. Even though the Phase 2 of the  
15 Wellpath Contract is delayed, the Union is unable to submit an alternate plan or respond  
16 to any arguments that its alternate plan can be more cost effective, efficient and  
17 comprehensive without the feasibility study required under the CBA. These undisputed  
18 facts establish breach of contract and breach of the covenant of good faith and fair  
19 dealing, and an anticipatory breach of contract, promissory estoppel, and establish serious  
20 issues with the single-source contract.  
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24 <sup>56</sup> Exhibit G.

25 <sup>57</sup> Metcalfe Aff. at ¶ 8.

1 The Union will also be irreparably harmed if the State of Alaska is not enjoined  
2 from taking any additional acts to implement Phase 2 of the Wellpath Contract. The  
3 injury to the Union is immediate and, without an injunction, is not remediable after the  
4 fact. Under the Wellpath Contract, employees who are Union members will be,  
5 essentially, deterred from maintaining their membership with the Union, and will be,  
6 potentially, hired by Wellpath under the Wellpath Contract. This will make it impossible  
7 for the Union to enjoy its right to submit an alternate plan if or when the State of Alaska  
8 fulfills its obligation to provide for a feasibility study. Essentially, the State of Alaska's  
9 breach of the CBA and its contract with Wellpath will limit and destroy the Union's  
10 rights under the CBA.

11 Finally, there is no harm to the State of Alaska if the parties continue the status  
12 quo, with the State of Alaska operating API. Such action will not jeopardize API's  
13 accreditation status with CMS or the findings of The Joint Commission. Indeed, an  
14 injunction will allow the State of Alaska to follow the terms of the CBA, obtain the  
15 feasibility study, and then allow the Union to submit an alternative plan before the State  
16 of Alaska takes any steps towards privatization, as required by the CBA.

17 **A. The Union has a Substantial (if not Guaranteed) Likelihood of Success on**  
18 **the Merits.**

19 The Union will prevail on its claims for breach of contract, anticipatory breach of  
20 contract and breach of the covenant of good faith and fair dealing. Under Alaska law, a

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21 58 *Id.*



1 claim for a breach of contract requires proof that a party had a duty to perform and that  
2 the party failed to perform as agreed in the contract.<sup>59</sup> The CBA unequivocally requires  
3 the State of Alaska to abide by a specific procedure when it determines to contract out  
4 positions that are subject to the CBA. It is undisputed that the State of Alaska failed to  
5 follow those steps, and is now trying to complete the feasibility study after it has entered  
6 into the multi-year Wellpath Contract.<sup>60</sup> In fact, in March 2019, Deputy Commissioner  
7 Wall told the Union that on advice of counsel the State of Alaska decided to extend the  
8 deadlines in the Wellpath Contract to “comply” with the CBA.<sup>61</sup> Even so, the State of  
9 Alaska continues to contract out with Wellpath under the terms of the Wellpath Contract,  
10 and in violation of the CBA. There simply cannot be any dispute over whether the State  
11 of Alaska breached the CBA.

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15 The State of Alaska also anticipatorily breached the Ratified CBA. That contract,  
16 subject to funding pursuant to AS 23.40.215, includes nearly identical provisions as the  
17 CBA.<sup>62</sup> The Ratified CBA is set to take effect on July 1, 2019. The State of Alaska will  
18 be in breach of that contract if it continues to take the steps towards privatization without  
19 satisfying Article 13 of the CBA.  
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22 <sup>59</sup> See Alaska P.J.I. 24.03, “Breach of Contract,” and 5A A. Corbin, Corbin on  
Contracts, § 1228 (1963).

23 <sup>60</sup> Metcalfe Aff. at ¶¶ 5-6; Exhibit L, ASEA Press Release, “State to Study API,  
Misunderstands Contract,” March 15, 2019.

24 <sup>61</sup> Exhibit K.

25 <sup>62</sup> Metcalfe Aff. at ¶ 3.

1        There is also a substantial likelihood that the Union will prevail on its claim for  
2        breach of the covenant of good faith and fair dealing. Under Alaska law, the covenant of  
3        good faith and fair dealing is implied in every contract in order to “effectuate the  
4        reasonable expectations of the parties to the agreement.”<sup>63</sup> The covenant includes  
5        subjective and objective elements.<sup>64</sup> In order to satisfy the subjective element, a party  
6        must establish that another party deprived it of the benefit of the contract.<sup>65</sup> The  
7        objective element requires a showing that the other party acted in an unfair matter.<sup>66</sup> A  
8        party breaches the covenant of good faith and fair dealing when it deprives “the other  
9        party of the explicit benefits of the contract,” and acts “in a manner that a reasonable  
10       person would regard as fair.”<sup>67</sup> Based on the facts, exhibits, and affidavits attached to  
11       this pleading, there is a substantial likelihood that because the State of Alaska breached  
12       the CBA, it breached the covenant of good faith and fair dealing. In fact, such a claim is  
13       assumed proved when a party, like the State of Alaska, breaches a contract.  
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17        The same is true for the Union’s promissory estoppel claim. There substantial  
18        likelihood the Union will prevail on its claim for promissory estoppel because the Union  
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21        <sup>63</sup>        *Anchorage Chrysler Ctr., Inc. v. DaimlerChrysler Motors Corp.*, 221 P.3d 977,  
22        992 (Alaska 2009).

23        <sup>64</sup>        *Id.*

24        <sup>65</sup>        *Id.*

25        <sup>66</sup>        *Id.*

26        <sup>67</sup>        *Casey v. Semco Energy, Inc.*, 92 P.3d 379, 383 (Alaska 2004).

1 relied on the promises by the State of Alaska, as described in the CBA, and enforcement  
2 is necessary in the interest of justice.<sup>68</sup>

3  
4 Finally, the single-source procurement awarded to Wellpath is a violation of the  
5 CBA. Article 13 of the CBA allows the Union to submit an alternate plan prior to the  
6 State of Alaska contracting with any other party. Even so, the State of Alaska entered  
7 into the Wellpath Contract without affording the Union the rights under the CBA. These  
8 facts are undisputed and establish the State of Alaska's breach.

10 **B. The Union Will Suffer Irreparable Harm if an Injunction does not Issue.**

11 The Union and its members will suffer irreparable harm if this Court does not  
12 immediately enjoin the State of Alaska from continuing the Wellpath Contract. The  
13 injury to the Union is irreparable for the reasons explained above, including that the  
14 Union and its members will not be able to remedy damages if Wellpath and the State of  
15 Alaska privatize API. Moreover, the Wellpath Contract (and the milestones associated  
16 with it) establishes the intent of Wellpath and the State of Alaska to fill GGU bargaining  
17 unit positions with non-union employees, forever altering the Union's membership and  
18 its ability to submit any alternate plan regarding API. This Court's immediate  
19 intervention is required to allow the Union its rights under the CBA, and to prevent  
20 irreparable harm.  
21  
22  
23

24 <sup>68</sup> *Valdez Fisheries Dev. Ass'n, Inc. v. Alyeska Pipeline Serv. Co.*, 45 P.3d 657  
25 (Alaska 2002).

Moreover, the longer Wellpath continues to operate within API, the more entrenched it becomes into API operations, making it impossible for the Union's alternate plan to receive "fair consideration," as required by the CBA.<sup>69</sup> Even now Wellpath is developing relationships and entering into contracts with vendors and contractors, and is submitting applications for pharmacy and food service licenses, and working with service providers as it transitions to full privatization.<sup>70</sup>

**C. The State of Alaska is Adequately Protected.**

In contrast to the irreparable harm facing the Union and its members, the State of Alaska will not be injured by an injunction maintaining the State of Alaska's operation of API pending the resolution of this case. Indeed, an injunction will require the State of Alaska to follow the law, and to abide by agreements and practices that are already in place. The parties have operated under the same agreements for years. An injunction ordering the State of Alaska to comply with the CBA and the Ratified CBA will cause no injury. As established by the exhibits and undisputed facts in this case, API has not lost certification or accreditation. The decisions by CMS and The Joint Commission are not because of the State of Alaska's contract with Wellpath.

Finally, the State of Alaska has a strong public policy in favor of collective bargaining agreements. In AS 23.40.070, the Alaska Legislature recognized that it is the

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<sup>69</sup> Exhibit A at 13.01 C.

<sup>70</sup> Metcalfe Aff. at ¶ 9; Exhibit C.

1 “public policy of the state to promote harmonious and cooperative relations between  
2 government and its employees and to protect the public by assuring effective and orderly  
3 operations of government,” including by allowing public employees the right to  
4 “organize for the purpose of collective bargaining.”<sup>71</sup>

6 **V. CONCLUSION**

7 For the reasons explained here, this Court should issue the proposed order granting  
8 the Union’s request for injunctive relief.

10 DATED this 15th day of April 2019, at Anchorage, Alaska.

11 DILLON & FINDLEY, P.C.  
12 Attorneys for Plaintiff

13 By: Molly C. Brown  
14 Molly C. Brown, ABA No. 0506057  
15 Margaret Simonian, ABA No. 9901001

24  
25 <sup>71</sup> AS 23.40.070(a).

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- 3 Employees Association, American Federation of State, County and
- 4 Municipal Employees Local 52, AFL-CIO, July 1, 2016 through June 30,
- 5 2019
- 6
- 7 Exhibit B Emails between Dep. Comm. Albert Wall, Jake Metcalfe and others, March
- 8 2019
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- 10 Exhibit C Alaska Psychiatric Institute, High Level Transition Timeline: Milestones
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- 23 from Preston M. Simmons, Chief Executive, Alaska, Providence Health &
- 24 Services Alaska to Representatives Ivy Spohnholz and Tiffany Zulkosky
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- 26 Exhibit H State of Alaska Press Release, "API Accreditation Renewed by the Joint
- Commission," April 12, 2019
- Exhibit I Email from Gavin Carmichael to API staff, April 8, 2019
- Exhibit J, Quality Report, The Joint Commission, reflecting "deemed status" for API
- Exhibit K Excerpts from the Feasibility Study of the Privatization of the Alaska
- Psychiatric Institute, Final Report, Feb. 23, 2017
- Exhibit L ASEA Press Release, "State to Study API, Misunderstands Contract,"
- March 15, 2019

## **EXHIBIT A**

# **COLLECTIVE BARGAINING AGREEMENT**

between the

**ALASKA STATE EMPLOYEES ASSOCIATION,  
AMERICAN FEDERATION OF STATE, COUNTY  
AND MUNICIPAL EMPLOYEES  
LOCAL 52, AFL-CIO**



and the

**STATE OF ALASKA**



covering the

**GENERAL GOVERNMENT BARGAINING UNIT**

**July 1, 2016 through June 30, 2019**



## **PREAMBLE**

This Agreement is made by and between the State of Alaska (Employer) and the Alaska State Employees Association (ASEA)/American Federation of State, County and Municipal Employees (AFSCME) Local 52, AFL-CIO (Union), covering the General Government Unit (GGU).

This Agreement has as its purpose the following: to promote harmonious, cooperative relations; to strengthen the merit principle; to establish a rational method for dealing with disputes; and to determine wages, hours, and other terms and conditions of employment for the General Government Bargaining Unit.

## **ARTICLE 1 – Union Recognition and Representation**

### **1.01 Exclusive Recognition.**

The State of Alaska, hereinafter referred to as the Employer, recognizes the Alaska State Employees Association, AFSCME Local 52, AFL-CIO, hereinafter referred to as the Union, as the exclusive representative of all permanent, probationary, provisional and nonpermanent personnel (excepting those employed in the Student, College and Graduate Intern job classes) in the General Government Unit (GGU) for collective bargaining with respect to salaries, wages, hours, and other terms and conditions of employment.

- A. "Employee" in this agreement shall mean a person in State service who is paid a salary or wage and holds probationary, permanent or provisional status working in a position that has been designated by the Alaska Labor Relations Agency (ALRA) as a General Government Unit position.
- B. "Bargaining unit member" in this Agreement shall mean an employee as defined at A above or an individual who holds a nonpermanent position in accordance with Article 9 of this Agreement who works in a position that has been designated by the ALRA as a General Government Unit position.

### **1.02 New or Changed Classifications.**

- A. All new positions and classifications created by the Employer shall be placed in the appropriate bargaining unit, consistent with prior Alaska Labor Relations Agency (ALRA) rulings. All disputes concerning the appropriate bargaining unit placement of a person employed by the Employer shall be decided by the ALRA and no such question shall be subject to the grievance procedure set forth in Article 16 of this Agreement.
- B. The Union shall be notified of all new job classifications created within ten (10) working days of such action. The notification shall include the specifications of the job classifications.
- C. No filled position shall be moved from the GGU to a different bargaining unit without written notification to the Union concurrent with the notification to the department. If the Union does not file a written petition with the ALRA challenging the proposed bargaining unit transfer within fifteen (15) working days of the notification to the Union, the Employer is free to take the proposed action. The Employer may change a vacant position to a bargaining unit outside the GGU and the Union shall be notified concurrently with such action.

For the purposes of this section, date of notification is the date of receipt by certified mail, or five (5) days following the date of postmark, whichever is earlier.

- b. Ten (10) calendar days when the employee resides within Alaska;
- 7. Has failed to promptly advise the Director of the Division of Personnel and Labor Relations in writing of the current mailing address. For this purpose, the return of a letter by the postal authorities, if properly addressed to the last address on record, shall be deemed sufficient grounds for removal.

**12.08 Notice of Removal.**

The Director of the Division of Personnel and Labor Relations shall provide written notice to a bargaining unit member permanently removed from the layoff list, except in those cases where removal is automatic, such as expiration of eligibility.

**ARTICLE 13 – Contracting Out**

**13.01 Feasibility Studies.**

- A. The Employer has the right at all times to analyze its operation for the purpose of identifying cost-saving opportunities, or improved services.
- B. Decisions to contract out shall be made only after the affected agency has conducted a written feasibility study determining the potential costs and benefits that would result from contracting out the work in question. The study shall include all costs associated with contracting out the work in question including, but not limited to, wages, benefits, administrative costs, agency overhead, program supervision, and audits
- C.
  - 1. The Employer shall notify the Union of its final decision regarding contracting out. A copy of the study will be provided to the Union.
  - 2. If the Employer decides to contract out and such contracting out will result in the displacement of employees, the Employer shall provide the Union with no less than thirty (30) calendar days notice that it intends to contract out bargaining unit work. The notification by the Employer to ASEA of the results of the feasibility study will include all information upon which the Employer based its decision to contract out the work, including but not limited to the total cost savings the Employer anticipates.
  - 3. The Union may then submit an alternate plan that is to include potential costs and benefits. During this thirty (30) day calendar period the Employer shall not release any bids and ASEA shall have the opportunity to submit an alternate plan that will be given fair consideration by the Employer. During this thirty (30) calendar day period, the Union shall have the opportunity to discuss the placement of affected employees.
- D. No employees shall be laid off and their work contracted out without meeting provision of 13.01.A above.

**13.02 Effect on Employees.**

- A. Once the Employer makes a decision to contract out work that will result in the displacement of employees, it will make a good faith effort to place employees elsewhere in state government in the following order of priority: 1) within the division, 2) within the department, or 3) within State service generally.
- B. In the event an employee must be displaced as a result of contracting out, such displacement shall be made in accordance with the layoff provisions of this Agreement.

### **13.03 Compliance.**

Upon request to the issuing agency, ASEA/AFSCME Local 52 is entitled to receive a copy of any audit performed on any State contract.

## **ARTICLE 14 – Notice of Discipline and Discharge**

- A. Discipline and discharge shall be for just cause.
- B. In cases of discipline, suspension or demotion, the Employer shall notify the bargaining unit member and the Union of the reasons for the action concurrent with commencement of the action.
- C. The Employer agrees that with the exception of instances of egregious misconduct, including but not limited to gross disobedience, theft, fraud, dishonesty, chemical or alcohol intoxication, being under the influence of alcohol while on the job, physical misconduct, abusive or lewd behavior, the unauthorized possession, viewing or accessing of pornography or lewd materials at work or on State equipment, or abandonment of duties, all permanent employees shall be given two (2) weeks notice or two (2) weeks pay prior to discharge. The employee shall be notified in writing of the reasons for discharge at the time of or prior to separation. The Union shall be furnished with a copy of the reasons for discharge concurrent with commencement of the action.

## **ARTICLE 15 – Complaint Resolution Process**

### **15.01 Individual Complaints.**

- A. A complaint is defined as: (1) any controversy, dispute or disagreement arising between the Union or an employee(s) and the Employer that does not concern the application or interpretation of the terms of this agreement, or (2) is the appeal of the discharge, demotion or suspension of a probationary employee not holding permanent status in another classification or (3) is a controversy, dispute or disagreement with respect to long-term nonpermanent employment. Such matters are not included in the definition of grievances as set out in Article 16. The following shall be the sole means of settling complaints.
- B. A complaint must be brought to the attention of the Employer, consistent with the procedures set forth in this Article, within fifteen (15) working days of the effective date of the action or inaction or the date the employee or long-term nonpermanent is made aware of such action or inaction, whichever is later. Deadlines for submission of a complaint at succeeding steps shall be counted from the date of email or fax receipt of a response from the Employer, or the date the response is due, whichever is earlier. Date of receipt of a complaint or response shall be the work day in which received if received before close of business or the following work day if received after close of business or on a weekend or holiday recognized in Article 24.
- C. If the Employer fails to render a decision within the allotted time, the complaint may be advanced to the next step by the Union. Allotted time frames may be extended by mutual agreement.
- D. Complaints shall be processed on forms provided by the Employer and agreed to by the Employer and the Union.
- E. The complaint will state the facts from which it arises, the rules, procedures or conditions which should be considered and the remedy requested. Adjustments to complaints shall

## **EXHIBIT B**

**Molly Brown**

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**Subject:** FW: API and Well Path

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**From:** Wall, Albert E (HSS) [<mailto:a.wall@alaska.gov>]  
**Sent:** Thursday, March 28, 2019 10:19 AM  
**To:** Jake Metcalfe <[JakeM@afscmelocal52.org](mailto:JakeM@afscmelocal52.org)>; Penner, Dana D (HSS) <[dana.penner@alaska.gov](mailto:dana.penner@alaska.gov)>  
**Cc:** 'jordan@local71.com' <[jordan@local71.com](mailto:jordan@local71.com)>; Doug Carson <[DougC@afscmelocal52.org](mailto:DougC@afscmelocal52.org)>; Mertl-Posthumus, Benthe (DOA) <[benthe@alaska.gov](mailto:benthe@alaska.gov)>  
**Subject:** RE: API and Well Path

Good afternoon,

My apologies for the delay. I was attempting to get specific answers for you before replying.

Yes, the dates on the contract have changed to June 15<sup>th</sup> and September 1<sup>st</sup> respectively, I will send it when I get it back from contracting. Mr. Penner, I just saw your email and I will get this to you all.

Still waiting on the contracting office to get me the RAP/RFP final.. my apologies, I WILL send it when I get it.

One other thing I wanted to mention is we will be making a full-time offer to a candidate for the DON position (the State of Alaska position) and have a good applicant for the ADON so when that recruitment closes we hope to make an offer as well.

Thank you.

Albert E. Wall  
Deputy Commissioner

---

**From:** Jake Metcalfe [<mailto:JakeM@afscmelocal52.org>]  
**Sent:** Thursday, March 21, 2019 9:06 AM  
**To:** Wall, Albert E (HSS) <[a.wall@alaska.gov](mailto:a.wall@alaska.gov)>  
**Cc:** Penner, Brian (DOA sponsored) <[bpenner@apea-aft.org](mailto:bpenner@apea-aft.org)>; 'jordan@local71.com' <[jordan@local71.com](mailto:jordan@local71.com)>; Doug Carson <[DougC@afscmelocal52.org](mailto:DougC@afscmelocal52.org)>  
**Subject:** API and Well Path

Dear DC Wall:

Last week, you called us to discuss the Well Path contract. In a telephone conversation that followed, you told me that the Phase 1 portion of the contract with Well Path had been extended from April 15 until June 15 and the Phase 2 portion of the contract from July 1, 2019 to September 1, 2019. You explained that this would allow DHSS to contract for and complete a feasibility study.

Today, members are contacting and reporting to me that DHSS is now saying those dates are not changing. Please confirm whether or not DHSS and Well Path have changed the dates of completion for the two phases. Furthermore, please provide us all with the RFP for the API feasibility study as soon as possible.

Thank you,

Jake Metcalfe  
Executive Director  
ASEA/AFSCME Local 52

## **EXHIBIT C**

**High Level Transition Timeline: Milestones**

**Initiate transition with DHSS: 2/11/2019**

**Assume operational authority: July 1, 2019**

<b>Diligence and Planning Phase</b>	<b>Key Milestones: February 2019</b>
	Conduct site visit of API
	Collect and review all current and past plans of corrective action
	Obtain all Policies and Procedures and current Job Descriptions for API
	Review applicable statutes and identify any other regulations applicable to API
	Conduct all staff meetings at API with all three shifts to introduce Wellpath
	Finalize transition plan
	Develop and finalize contract with CMS consultant
	Finalize transition team and interim leadership team
	Develop recruitment strategy and job fair plan
<b>Transition Phase</b>	Meet with key constituents/stakeholders
	Create timeline for onboarding and interviewing API staff
	Review and finalize transition plan with DHSS
	Biweekly transition meetings with DHSS
	<b>Key Milestones: March 2019</b>
	Finalize all job descriptions and post positions for API
	Ensure posting of all vacant positions
	Begin job fairs and extended recruitment activities
	Order any identified FF&E and supplies
	Identify internal WRS line staff and mid-level managers to assist with job-specific training
<b>Activation</b>	Identify MANDT de-escalation training instructors
	Review credentials of all incumbent staff
	Biweekly transition meetings with DHSS
	<b>Key Milestones: April 2019</b>
	Finalize selection of incumbent staff
	Finalize selection of key leaders (Executive Management Group)
	All interviews completed and offers extended with start date for incumbent staff
	Continue to conduct job fairs for vacant positions
	Finalize initial orientation and education plan for all employees
	Update current CMS, TJC, and any other corrective action plans as needed
<b>Activation</b>	Begin negotiations for shared services agreements, vendors, contractors, etc.
	Submit applications for pharmacy and food services licenses, as well as CLIA waiver
	Begin identifying ancillary service providers
	Weekly transition meetings with DHSS
	<b>Key Milestones: May 2019</b>
	Continue to conduct job fairs for vacant positions
	Finalize all contracts, shared services agreements, contractors, etc.
	Begin onboarding and training all staff
	Train staff on policies and procedures
	Weekly transition meetings with DHSS
<b>Activation</b>	<b>Key Milestones: June 2019</b>
	Continue to conduct job fairs for vacant positions
	Continue onboarding and training of staff
	Continue training staff on policies and procedures
	All staff fully trained and ready for deployment
	Weekly transition meetings with DHSS
	<b>Key Milestones: July 2019</b>
	WRS assumes operations of API
	All management team is in place and onsite
	All facility based operations are in place
	Weekly transition meetings with DHSS



## **EXHIBIT D**

**Adam Crum**  
Commissioner

dhss.alaska.gov



**Department of Health  
and Social Services**

Anchorage, Alaska

**STATE OF ALASKA**

**PRESS RELEASE**

**FOR IMMEDIATE RELEASE: Feb. 8, 2019**

Contact: Clinton Bennett, DHSS: (907) 269-4996, [clinton.bennett@alaska.gov](mailto:clinton.bennett@alaska.gov)

**Commissioner assumes management of Alaska Psychiatric Institute;  
changes will improve patient and staff safety**

February 8, 2019 ANCHORAGE — Alaska Department of Health and Social Services Commissioner Adam Crum has invoked his authority under state law to immediately assume management of Alaska Psychiatric Institute (API).

The decision was made in response to the considerable problems that continue to put patients and staff in jeopardy at API and in light of recent and ongoing investigations from the Centers for Medicare and Medicaid Services (CMS) and other state and federal regulatory agencies.

As part of assuming authority over API, Commissioner Crum has chosen to contract with Wellpath Recovery Solutions, a nationally recognized health care company with a proven record of success, to provide administrative leadership of the facility with continued oversight from the state.

“During the course of recent investigations at API, we determined immediate steps were needed to protect patients and staff and ensure complete compliance with federal regulations, which also allows the facility to continue to receive federal funds,” said Commissioner Crum.

Serious efforts have been made towards addressing the deficiencies identified by federal and state authorities, but progress is not being made quickly enough. While additional security measures have recently been implemented at API to better ensure patient and staff safety, contracting with Wellpath was deemed necessary to further address safety and patient rights issues and bring the facility rapidly into complete compliance with federal and state standards.

Alaska state law ([AS 47.32.140](#)) allows for the commissioner to assume either temporary or permanent management of a licensed health care entity when there is reasonable cause to believe there is a danger to the health, safety or welfare of individuals receiving care from that entity.

The contract with Wellpath provides for administrative oversight with the intent of correcting problems of patient and staff safety and patient rights, bringing the hospital into rapid compliance with its regulatory bodies, improving the therapeutic environment, and preparing the hospital to return to its full capacity by June 30, 2019.

During the initial phase of the contract, Wellpath will bring in a team of experts to fill key leadership positions at API to support the successful completion of their mission. All API staff will remain in their positions as State of Alaska employees. Gavin Carmichael will continue as API's acting chief executive officer. If Wellpath is successful in the first phase, the company will assume full responsibility of API after July 1, 2019.

"I recognize this decision may take Alaskans by surprise, but it was not made lightly. Changes have been needed at API for a very long time," said Commissioner Crum. "This decision will help us solve these long-standing problems at API, and then allow us to more effectively broaden our focus to address the entire continuum of behavioral health care across Alaska."

Wellpath, which is a recent merger of Correct Care Solutions and Correctional Medical Group Companies, has had success bringing facilities similar to API back into compliance with CMS and Joint Commission standards. In Massachusetts, Wellpath substantially improved conditions at the Bridgewater State Hospital after assuming operations in 2017. All hospitals managed by Wellpath are fully accredited by the Joint Commission.

Representatives from the Alaska Mental Health Trust, the Alaska Behavioral Health Association, North Star Behavioral Health, Alaska Regional Hospital and Fairbanks Memorial Hospital will be joining the Alaska Department of Health and Social Services as we announce this decision today and are in support of this course of action.

"By taking this step with the support of the health care community, the State of Alaska and our health care partners can begin to seriously address API's longstanding problems and Alaska's behavioral health crisis," said Commissioner Crum.

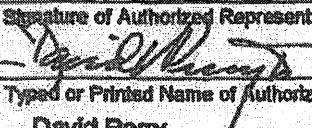
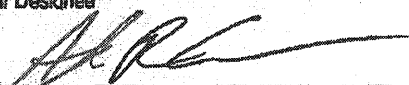

Questions and comments regarding these changes may be emailed to the [api.info@alaska.gov](mailto:api.info@alaska.gov) address.

# # #

**EXHIBIT E**

# Standard Agreement Form for Professional Services

The parties' contract comprises this Standard Agreement Form, as well as its referenced Articles and their associated Appendices

1. Agency Contract Number 0619-131		2. Contract Title Hospital Administration Services	
3. Vendor Number VS007274		4. IRIS CT Number	5. Alaska Business License Number 1113050
This contract is between the State of Alaska,			
6. Department of Health & Social Services		Division Alaska Psychiatric Institute (API)	hereafter the State, and
7. Contractor Wellpath Recovery Solutions, LLC hereafter the contractor			
Mailing Address	Street or P.O. Box	City	State ZIP+4
1283 Murfreesboro Rd, Suite 500		Nashville	TN 37217
<p>8. <b>ARTICLE 1. Appendices:</b> Appendices referred to in this contract and attached to it are considered part of it.</p> <p><b>ARTICLE 2. Performance of Service:</b></p> <p>2.1 Appendix A governs the performance of services under this contract.</p> <p>2.2 Appendix B sets forth the liability and insurance provisions of this contract.</p> <p>2.3 Appendix C sets forth the services to be performed by the contractor.</p> <p>2.4 Appendix D sets forth the provision for payment.</p> <p>2.5 Appendix E governs the use of Protected Health Information under this contract.</p> <p>2.6 Appendix F confirms the contractor is in good legal standing with the federal government.</p> <p><b>ARTICLE 3. Period of Performance:</b> The period of performance for this contract begins for Phase 1 on <u>February 8, 2019</u>, and ends <u>June 30, 2019</u>; Phase 2 begins on July 1, 2019 through June 30, 2024</p> <p><b>ARTICLE 4. Considerations:</b></p> <p>4.1 In full consideration of the contractor's performance under this contract with respect to the Startup Phase, the State shall pay the contractor a sum not to exceed \$ <u>5,000,000.00</u> for Phase 1 and the Per Diem rate for Phase 2 as described in Appendix D.</p>			
8. Department of Health & Social Services		Attention: Division of Alaska Psychiatric Institute (API)	
Mailing Address PO Box 110650, Juneau, Alaska 99811-0650		Attention: Grants & Contracts Support Team	
10. <b>CONTRACTOR</b>		12. <b>CERTIFICATION:</b> I certify that the facts herein and on supporting documents are correct, that this voucher constitutes a legal charge against funds and appropriations cited, that sufficient funds are encumbered to pay this obligation, or that there is a sufficient balance in the appropriation cited to cover this obligation. I am aware that to knowingly make or allow false entries or alterations on a public record, or knowingly destroy, mutilate, suppress, conceal, remove or otherwise impair the verity, legibility or availability of a public record constitutes tampering with public records punishable under AS 11.56.815-.820. Other disciplinary action may be taken up to and including dismissal.	
Name of Firm Wellpath Recovery Solutions, LLC			
Signature of Authorized Representative 		Date 2/8/2019	
Typed or Printed Name of Authorized Representative David Perry			
Title Executive Vice President			
11. <b>CONTRACTING AGENCY</b>		Signature of Head of Contracting Agency or Designee 	
Department/Division Health & Social Services / API		Date 2/8/19	
Signature of Project Director 		Typed or Printed Name Adam Crum	
Typed or Printed Name of Project Director Albert E. Wall		Title Commissioner	
Title Deputy Commissioner, DHSS			

NOTICE: This contract has no effect until signed by the head of contracting agency or designee.

## Appendix A

### General Provisions

#### Article 1. Definitions.

- 1.1 In this contract and appendices, "Project Director" or "Agency Head" or "Procurement Officer" means the person who signs this contract on behalf of the Requesting Agency and includes a successor or authorized representative.
- 1.2 "State Contracting Agency" means the department for which this contract is to be performed and for which the Commissioner or Authorized Designee acted in signing this contract.

#### Article 2. Inspections and Reports.

- 2.1 The department may inspect, in the manner and at reasonable times it considers appropriate, all the contractor's facilities and activities under this contract.
- 2.2 The contractor shall make progress and other reports in the manner and at the times the department reasonably requires.

#### Article 3. Disputes.

If the contractor has a claim arising in connection with the contract that it cannot resolve with the State by mutual agreement, it shall pursue the claim, if at all, in accordance with the provisions of AS 36.30.620 – 632.

#### Article 4. Equal Employment Opportunity.

- 4.1 The contractor may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, or because of age, disability, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position(s) do not require distinction on the basis of age, disability, sex, marital status, changes in marital status, pregnancy, or parenthood. The contractor shall take affirmative action to insure that the applicants are considered for employment and that employees are treated during employment without unlawful regard to their race, color, religion, national origin, ancestry, disability, age, sex, marital status, changes in marital status, pregnancy or parenthood. This action must include, but need not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this paragraph.
- 4.2 The contractor shall state, in all solicitations or advertisements for employees to work on State of Alaska contract jobs, that it is an equal opportunity employer and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, disability, sex, marital status, changes in marital status, pregnancy or parenthood.
- 4.3 The contractor shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' compensation representative of the contractor's commitments under this article and post copies of the notice in conspicuous places available to all employees and applicants for employment.
- 4.4 The contractor shall include the provisions of this article in every contract, and shall require the inclusion of these provisions in every contract entered into by any of its subcontractors, so that those provisions will be binding upon each subcontractor. For the purpose of including those provisions in any contract or subcontract, as required by this contract, "contractor" and "subcontractor" may be changed to reflect appropriately the name or designation of the parties of the contract or subcontract.
- 4.5 The contractor shall cooperate fully with State efforts which seek to enforce State and Federal laws prohibiting discrimination, and with all other State efforts to enforce State and Federal laws related to fair employment practices under this contract, and promptly comply with all requests and directions from the State Commission for Human Rights or any of its officers or agents relating to prevention of discriminatory employment practices.
- 4.6 Full cooperation in paragraph 4.5 includes, but is not limited to, being a witness in any proceeding involving questions of unlawful discrimination if that is requested by any official or agency of the State of Alaska; permitting employees of the contractor to be witnesses or complainants in any proceeding involving questions of unlawful discrimination, if that is requested by any official or agency of the State of Alaska; participating in meetings; submitting periodic reports on the equal employment aspects of present and future employment; assisting inspection of the contractor's facilities; and promptly complying with all State directives considered essential by any office or agency of the State of Alaska to insure compliance with all federal and State laws, regulations, and policies pertaining to the prevention of discriminatory employment practices.
- 4.7 Failure to perform under this article constitutes a material breach of contract.

**Article 5. Termination.**

The Project Director, by written notice, may terminate this contract, in whole or in part, for good cause, provided it first gives the contractor written notice of the facts alleged to constitute good cause and affords the contractor a reasonable opportunity to cure, which shall not be less than 30 days in any event.

Each party shall have the right to terminate this contract upon 180 days' advance written notice to the other. In the absence of a breach of contract by the contractor, the State shall be liable only for payment in accordance with the payment provisions of this contract for services rendered before the effective date of termination.

**Article 6. No Assignment or Delegation.**

The contractor may not assign or delegate this contract, or any part of it, or any right to any of the money to be paid under it, except with the written consent of the Project Director and the Agency Head.

**Article 7. No Additional Work or Material.**

No claim for additional services, not specifically provided in this contract, performed or furnished by the contractor, will be allowed, nor may the contractor do any work or furnish any material not covered by the contract unless the work or material is ordered in writing by the Project Director and approved by the Agency Head.

**Article 8. Independent Contractor.**

The contractor and any agents and employees of the contractor act in an independent capacity and are not officers or employees or agents of the State in the performance of this contract.

**Article 9. Payment of Taxes.**

As a condition of performance of this contract, the contractor shall pay all federal, State, and local taxes incurred by the contractor and shall require their payment by any Subcontractor or any other persons in the performance of this contract. Satisfactory performance of this paragraph is a condition precedent to payment by the State under this contract.

**Article 10. Ownership of Documents.**

Except as may be subject to legal privilege or otherwise protected by applicable law, all designs, drawings, specifications, notes, artwork, and other work developed by the contractor specifically and exclusively for use in the performance of this agreement are produced for hire and remain the sole property of the State of Alaska and may be used by the State for any other purpose without additional compensation to the contractor. The contractor agrees not to assert any rights and not to establish any claim under the design patent or copyright laws. Nevertheless, if the contractor does mark such documents with a statement suggesting they are trademarked, copyrighted, or otherwise protected against the State's unencumbered use or distribution, the contractor agrees that this paragraph supersedes any such statement and renders it void. The contractor, for a period of three years after final payment under this contract, agrees to furnish and provide access to all retained materials at the request of the Project Director. Unless otherwise directed by the Project Director, the contractor may retain copies of all the materials.

**Article 11. Governing Law; Forum Selection.**

This contract is governed by the laws of the State of Alaska. To the extent not otherwise governed by Article 3 of this Appendix, any claim concerning this contract shall be brought only in the Superior Court of the State of Alaska and not elsewhere.

**Article 12. Conflicting Provisions.**

Unless specifically amended and approved by the Department of Law, the terms of this contract supersede any provisions the contractor may seek to add. The contractor may not add additional or different terms to this contract; AS 45.02.207(b)(1). The contractor specifically acknowledges and agrees that, among other things, provisions in any documents it seeks to append hereto that purport to (1) waive the State of Alaska's sovereign immunity, (2) impose indemnification obligations on the State of Alaska, or (3) limit liability of the contractor for acts of contractor negligence, are expressly superseded by this contract and are void.

**Article 13. Officials Not to Benefit.**

Contractor must comply with all applicable federal or State laws regulating ethical conduct of public officers and employees.

**Article 14. Covenant Against Contingent Fees.**

The contractor warrants that no person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee except employees or agencies maintained

by the contractor for the purpose of securing business. For the breach or violation of this warranty, the State may terminate this contract without liability or in its discretion deduct from the contract price or consideration the full amount of the commission, percentage, brokerage or contingent fee.

**Article 15. Compliance.**

In the performance of this contract, the contractor must comply with all applicable federal, state, and borough regulations, codes, and laws, and be liable for all required insurance, licenses, permits and bonds.

**Article 16. Force Majeure.**

The parties to this contract are not liable for the consequences of any failure to perform, or default in performing, any obligations under this Agreement, if that failure or default is caused by any unforeseeable Force Majeure, beyond the control of, and without the fault or negligence of, the respective party. For the purposes of this Agreement, Force Majeure will mean war (whether declared or not); revolution; invasion; insurrection; riot; civil commotion; sabotage; military or usurped power; lightning; explosion; fire; storm; drought; flood; earthquake; epidemic; quarantine; strikes; acts or restraints of governmental authorities affecting the project or directly or indirectly prohibiting or restricting the furnishing or use of materials or labor required; inability to secure materials, machinery, equipment or labor because of priority, allocation or other regulations of any governmental authorities.



## Appendix B2

### Indemnity and Insurance

#### Article 1. Indemnification

The Contractor shall indemnify, hold harmless, and defend the contracting agency from and against any claim of, or liability for error, omission or negligent act of the Contractor under this agreement. The Contractor shall not be required to indemnify the contracting agency for a claim of, or liability for, the independent negligence of the contracting agency. If there is a claim of, or liability for, the joint negligent error or omission of the Contractor and the independent negligence of the Contracting agency, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "Contractor" and "Contracting agency", as used within this and the following article, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term "independent negligence" is negligence other than in the Contracting agency's selection, administration, monitoring, or controlling of the Contractor and in approving or accepting the Contractor's work.

#### Article 2. Insurance

Without limiting contractor's indemnification, it is agreed that contractor shall purchase at its own expense and maintain in force at all times during the performance of services under this agreement the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the contractor's policy contains higher limits, the state shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the contracting officer prior to beginning work and must provide for a notice of cancellation or non-renewal in accordance with policy provisions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this contract and shall be grounds for termination of the contractor's services. All insurance policies shall comply with and be issued by insurers licensed to transact the business of insurance under AS 21.

**2.1 Workers' Compensation Insurance:** The Contractor shall provide and maintain, for all employees engaged in work under this contract, coverage as required by AS 23.30.045, and; where applicable, any other statutory obligations including but not limited to Federal U.S.L. & H. and Jones Act requirements. The policy must waive subrogation against the State.

**2.2 Commercial General Liability Insurance:** covering all business premises and operations used by the Contractor in the performance of services under this agreement with minimum coverage limits of \$1,000,000 combined single limit per claim.

**2.3 Commercial Automobile Liability Insurance:** covering all vehicles used by the Contractor in the performance of services under this agreement with minimum coverage limits of \$1,000,000 combined single limit per claim.

**2.4 Professional Liability Insurance:** covering all errors, omissions or negligent acts in the performance of professional services under this Agreement with minimum coverage limits of \$1,000,000 combined single limit per claim during the Phase 1: Startup, and with minimum coverage limits of \$5,000,000 combined single limit per claim during the Phase 2: Ongoing Operations & Sustainability Plan Development of this Agreement, if invoked.

## Appendix C

### Description of Services

#### **The Alaska Psychiatric Institute (API):**

The Alaska Psychiatric Institute (API) is licensed to operate an 80-bed acute care psychiatric inpatient hospital serving a population of approximately 735,000 people across the State of Alaska. API requires compliance under Conditions of Participation (CoP) by accrediting bodies to include CMS, the Joint Commission, health facilities, and licensing. API provides direct patient care in the most restrictive setting, as well as psychiatric services, forensic psychology services (including court ordered evaluations, court testimony, and competency restoration), and psychology services (includes active treatment, individual counseling, treatment planning, rehabilitation, neuropsychological screening, and psycho-educational assessments). The institute also provides medication support including an inpatient pharmacy, testimony at court proceedings on medication management, and support of the Division of Juvenile Justice's pharmaceutical needs. API also works with many partners from various health care providers and nonprofit agencies and is a member of the Joint Medical Emergency Preparedness Group. This group supplies mutual aid and support between area hospitals and local treatment centers in the event of a natural disaster or mass casualty situation.

#### **Scope of Work**

This agreement contemplates two phases, to be implemented sequentially as follows:

Phase	Description	Term	Contract
1	Startup	February 8, 2019 (the "Effective Date") through June 30, 2019	The initial phase of the contract
2	Ongoing Operations	July 1, 2019 (the "Operation Date") through June 30, 2024	Certain terms and conditions of this phase shall be negotiated and reflected in an amendment prior to June 30, 2019.

#### **Phase 1 - Startup**

During the Startup Phase, the contractor shall take all actions reasonably necessary for API to be in full operation and capable of serving patients by June 30, 2019, including:

1. Causing API to be in compliance, as of the Operation Date, with all regulatory authority (as evidenced by maintaining licensing, certification and/or accreditation) or if, required, re-establishing licensing certification and/or accreditations; this specifically includes certification or re-certification under the Medicaid program;
2. All 80 beds being fully available for utilization; staffed by the necessary clinical and support staff.
3. Implementation of the Transition Plan set forth in the document entitled 'API Transition Plan 02.06.19'. Any changes to the document version at time of contract execution must be agreed upon by both parties.
4. Hiring of the staff and personnel set forth on Exhibit 1 to this Appendix C (the "Staffing Plan"). Any changes to the Staffing Plan must be agreed upon by both parties. All personnel will be trained by Wellpath according to approved policies and procedures to ensure safe and secure facility.

#### **Additional Terms & Conditions of Phase 1:**

1. On and following the Effective Date, Wellpath shall have sufficient staff present at API to perform the services to be provided by Wellpath during the Startup Phase. Wellpath shall provide sufficient staff to effect a transition of existing staff and all services to assume complete operation of API no later than July 1, 2019. Said staff may be Wellpath employees or other contracted staff (contracted by Wellpath) with experience in areas including, but

*Hospital Administration Services*

not limited to medical services, psychiatry, psychology, nursing, performance improvement, risk management, evidence-based programs, trauma-informed care, safety, finance, accounting, billing, information technology, compliance, general administration, and CMS certification.

2. Within 30 days of the Effective Date, Wellpath shall submit to the Project Director a written plan outlining the actions to be taken in furtherance of the objectives of Phase One, identified above. This report shall be updated every month through the startup phase, and must identify benchmarks and progress towards them, whether met or not met, and provide a detailed analysis of the challenges and opportunities to meet those challenges.
3. The parties acknowledge that during the Startup Phase, Wellpath is not responsible for the operations of API, and that this Agreement contemplates Wellpath being prepared to assume such responsibility as of the commencement of the Operation Date, on July 1, 2019.
4. Wellpath shall engage/hire those persons, including any contractors hired under Paragraph 1 above, necessary to operate API in accordance with the Staffing Plan. Wellpath shall be financially responsible to pay wages, benefits, and fees of the personnel listed on the Staffing Plan, as required by applicable law and shall comply with any responsibilities related to tax withholdings required by applicable law with respect to such personnel on the Staffing Plan.
5. All employees currently engaged at API will remain the financial responsibility of the State. Transition team members and new employees, including contractors hired by Wellpath in anticipation of the Operations Date will be the financial responsibility of Wellpath. Effective on the Operations Date, existing State employees at API shall be eligible to apply for rehire with Wellpath and have preference in that process.
6. Wellpath shall provide collaboration, cooperation, and participation in any state proceeding including court proceedings or legislative hearings related to the services of this contract.
7. Through June 30, 2019, Wellpath shall honor terms & conditions of existing contracts that API is currently engaged in. Requests for termination or adjustment to any contract must be presented to the State, in writing, for approval, along with a proposal for the amendment/termination that exhibits adherence to the terms & conditions of these contracts. The State will remain financially responsible for the costs of services provided under these contracts during Phase 1.
8. Pharmacy services will remain the responsibility of the State during Phase 1; the State shall be financially responsible for the cost of all clinically-indicated medications and pharmacy services.

**Completion of Phase 1**

On or before April 15, 2019, the project manager shall conduct an evaluation of the services performed in Phase 1. If at that time, the services are adequately met, the parties will engage in negotiations to amend this agreement and outline the terms described in Phase 2: Ongoing Operations.

**Phase 2 - Ongoing Operations**

Commencement of Phase 2 will begin on the Operations Date, upon acceptance of completion of Phase 1. Upon commencement of Phase 2, Wellpath shall be authorized to manage and operate all aspects of API. Wellpath shall manage and operate API in compliance with all applicable federal, state, and local laws. Wellpath shall promulgate and implement operating policies and procedures for API within thirty (30) days after the Operation Date. This includes all ancillary services required to operate the hospital in compliance with all federal and state standards and to meet the health safety and welfare of all staff and patients.

**Pharmacy**

As of the Operations Date, Wellpath shall arrange for and be financially responsible for the cost of all clinically-indicated medications and pharmacy services. All prescribing, dispensing, and administering of medication inside of API shall comply with all state and federal laws and regulations.

**Pass-through Services and Costs**

As of the Operations Date, excepting staffing compensation and pharmacy costs, all other costs related to the operation and management of API of any nature whatsoever shall be the financial responsibility of the Department.

Wellpath shall arrange for and ensure the provision of all services necessary to manage and operate API, in Wellpath's discretion, but Wellpath shall invoice the cost for such services (except for staffing and pharmacy) to the Department as a pass-through cost in accordance with Appendix D below. For avoidance of doubt, and only for illustrative purposes and not as an exhaustive list, Wellpath shall arrange for the following services, supplies, and items and shall bill the Department for such expenses as pass-through costs for which the Department shall be ultimately financially responsible:

1. Operational services such as food, janitorial, housekeeping, trash removal, transportation (including vehicle maintenance), landscaping, any health care services performed outside of API (including, but not limited to, outpatient services, inpatient hospitalizations, and medication costs associated therewith).
2. All supplies and equipment necessary to operate API, including without limitation food, employee uniforms, patient clothing, cleaning supplies, office supplies, medical consumables, program supplies, medical equipment, recreational and educational supplies, and all similar items.
3. All costs related to the maintenance and repair of the interior and exterior of API. Notwithstanding the foregoing, if the cost to repair, maintain, or replace an item or system exceeds Five Thousand Dollars (\$5,000), Wellpath shall consult with the Department prior to arranging for the repair, maintenance, or replacement.
4. All utilities and communication services for API, including any pay phones, cable, and internet.

Phase 2 services and terms of payment shall be negotiated in accordance with Appendix D and outlined via amendment prior to the Operations Date. These terms shall include, but are not limited to:

1. Pharmacy
2. Pass through costs
3. Budget and staff in reconciliations
4. Taxes
5. Existing contracts, as applicable
6. IT costs
7. Funding sources and terms of payment. Including but not limited to:
  - a. DSH Funding
  - b. ProShare Funding
  - c. Medicare, Medicaid, private insurance, self-pay

### **IT and Security Requirements**

Wellpath shall coordinate and agree to all privacy and security protocols related to this agreement with respect to accessing the current data systems and electronic health records system. However, this provision does not preclude Wellpath from installing and operating a new, updated or different electronic health records system during this agreement. In coordination with Wellpath, the DHSS Chief Security Officer and Privacy Officer shall review any proposed new, updated or different electronic health record systems and data systems to ensure legal compliance with information security and privacy best practices; especially 45 C.F.R. §§ 164.302 – 318. Wellpath shall expeditiously provide documentation and access requested by the DHSS Chief Security Officer and Privacy Officer for the review. Wellpath shall not install or operate new, updated or different electronic health record systems or data systems until they receive written approval from the DHSS Chief Security Officer and Privacy Officer.

## Appendix C - Exhibit 1 Staffing Plan

Administration	
Hospital Administrator	1.00
Assistant Hospital Administrator	1.00
Risk Manager	1.00
Paralegal	2.00
Administrative Assistant	9.00
PI/Quality Manager	1.00
Compliance Manager	1.00
Patient Advocate	1.00
<b>Sub Total</b>	<b>17.00</b>
Business / Support	
Business Manager	1.00
Accountant	1.00
Account Clerk	8.00
Training Coordinator	1.00
HR Manager	1.00
HR Generalist	1.00
Recruiter	1.00
<b>Sub Total</b>	<b>14.00</b>
Health Information Services	
IT Delivery Manager	1.00
MIS Specialist	1.00
<b>Sub-Total</b>	<b>2.00</b>
Maintenance	
Facility Maintenance Manager	1.00
Maintenance Generalist/Specialist	4.00
<b>Sub Total</b>	<b>5.00</b>

Healthcare	
Medical Director	1.00
Medical Provider	2.00
Pharmacist	2.00
Pharmacy Technician	1.00
Medical Records Personnel	2.00
Psychiatric Provider	4.50
<b>Sub Total</b>	<b>12.50</b>
Nursing	
Director of Nursing	1.00
Assistant Director of Nursing	1.00
Nursing Supervisor	5.00
Nurse Educator	1.00
Infection Control	1.00
Registered Nurse	38.00
Mental Health Technician	81.00
Staff Scheduler	1.00
Utilization Nurse	1.00
<b>Sub Total</b>	<b>130.00</b>
Treatment / Mental Health	
Director of Social Work	1.00
Clinical Director	1.00
Rehab Manager	1.00
Psychologist	5.50
Social Worker/Case Manager	9.00
Admissions/Discharge Coordinator	3.00
Recreational Specialist/Assistant	9.00
Rehabilitation Counselor	10.00
Recovery Plan Coordinator	4.00
Psychology Intern	2.00
Peer Support Specialist	2.00
Forensic Liaison	1.00
<b>Sub Total</b>	<b>48.50</b>

Food Service	
Food Services Manager	1.00
Food Service Supervisor	1.00
Cooks	4.00
Food Service Assistants	6.00
Dietician	1.00
<b>Sub-Total</b>	<b>13.00</b>
Safety	
Safety Director	1.00
TST Shift Supervisor	5.00
Therapeutic Safety Technician	28.00
<b>Sub-Total</b>	<b>34.00</b>
SUMMARY	
Administration	17.0
Business / Support	14.0
Health Information Services	2.0
Maintenance	5.0
Healthcare	12.5
Nursing	130.0
Treatment / Mental Health	48.5
Food Service	13.0
Safety	34.0
<b>TOTAL STAFF</b>	<b>276.0</b>
Staffing plan may be modified based on changes in patient acuity and commitment types. Additionally, Psychiatric ARNP hours may be substituted for psychiatrist hours on a 2:1 ratio as clinically appropriate.	

## Appendix D Payment for Services

For all phases of the contract, the following applies:

### Subject to Appropriations

All payments by the Department to Wellpath under this Agreement are subject to appropriations sufficient to fund the payment requirements of this Agreement in accordance with state law. In the event the State of Alaska fails to appropriate an amount sufficient to fund the payments due under this Agreement, the Department shall provide immediate written notice to Wellpath, and Wellpath shall thereupon have the right to cease performing services hereunder.

The parties acknowledge that funding for this Agreement will include a mix of state general funds, interagency receipts from claims related to Medicaid beneficiaries/DSH (Disproportionate Share Hospitals), and Statutory Designated Program Receipts from claims related to Medicare and other insurances.

### Financial Records

Wellpath shall maintain financial records necessary for the Department to verify the expenditures for API claimed under the Budget. Such records shall be made available to the Project Director within 30 days of written request.

### Invoicing

The Contractor will submit the invoices described for each phase (below) as follows:

Email invoices to:

[hss.fms.contracts.invoicing@alaska.gov](mailto:hss.fms.contracts.invoicing@alaska.gov)

(please reference the contract 0619-131 in the subject line)

Each invoice must:

- reference the Contractor's name, address and phone number
- reference the contract number: 0619-131
- include an invoice number
- identify the period which is being invoiced, and any prorated amount
- Reference DHSS – API, for whom the services are being provided

The parties shall use good faith efforts to negotiate an amendment, not later than February 28, 2019, to provide a dispute resolution mechanism related to the withholding of payment for Contractor's failure to perform services as required under this Agreement.

### Phase 1: Startup - Billing Information

For the performance of the services of Phase 1: Startup, the State shall be billed monthly, in the amount of \$1,000,000 per month, prorated for the initial and any subsequent partial month of service.

Wellpath shall submit the first invoice to the Department on the Effective Date, with payment due to Wellpath within thirty (30) days thereafter. The final invoice to the Department for services rendered during the Startup Phase shall be submitted on or around June 15, 2019.



**Phase 2: Ongoing Operations – Billing Information**

Beginning upon the Operation Date, the Department shall pay to Wellpath, as compensation for its services to be provided hereunder, an amount to be agreed by the Parties which shall be expressed as a per diem amount, multiplied by 80 (the "Operating Fee"). All other operational costs shall be passed through to the Department. The anticipated costs to the Department for managing and operating API for the first year of the Initial Term (the "Budget") shall be as set forth in Exhibit 1 to this Appendix D. The parties recognize that the Budget shall be an estimate and may vary subject to the actual costs needed to operate and manage API. Beginning on the Operation Date and on the first day of each month thereafter, Wellpath will submit an invoice to the Department for the Operating Fee for the month, plus 1/12th of the annual Budget. The Department shall pay such invoice within thirty (30) days of the invoice date. The Operating Fee and Budget (using the actual or forecasted full year Budget amount after taking into account the adjustments made pursuant to the following paragraph) shall be increased upon each anniversary of the Operation Date by the then applicable annual percentage increase in the Consumer Price Index, All Urban Consumers, Medical Care Component, Anchorage Area, published by the United States Department of Labor, Bureau of Labor Statistics. Wellpath and the Department acknowledge their mutual intention to explore the feasibility of replacing the foregoing compensation arrangement with a fully-capitated approach at a time to be determined following the first anniversary of the Operation Date.

**Budget Reconciliation**

After the Operation Date, on a quarterly basis, Wellpath will true up invoices against actual costs incurred for that quarter and submit an adjusted invoice to the Department. If actual costs exceed payments, the Department shall pay any balance to Wellpath within fifteen (15) days of the date of invoice. If payments exceed actual costs, Wellpath shall issue a credit to the Department on the next monthly invoice in an amount equal to such excess.

**Staffing Reconciliation**

(i) After the Operation Date, if the hours actually worked by each Non-Supervisory Position in any month are less than the hours required according to the Staffing Plan, then Wellpath shall deduct from the following month's invoice an amount equal to the difference between (a) the hourly rate of such position(s) multiplied by the number of hours required to be provided by such position in such month pursuant to the Staffing Plan, less (b) the hourly rate of such position multiplied the number of hours actually served by such position in such month. For purposes of this paragraph, "Non-Supervisory Position" shall be defined in a subsequent amendment to this Agreement.

(ii) After the Operation Date, if any Supervisory Position remains vacant for sixty (60) consecutive days or more, Wellpath shall deduct from the following month's invoice an amount equal to the difference between (a) the hourly rate of such position(s) multiplied by the number of hours required to be provided by such position in such month pursuant to the Staffing Plan, less (b) the hourly rate of such position multiplied the number of hours actually served by such position in such month. For purposes of this paragraph, "Supervisory Position" shall be defined in a subsequent amendment to this Agreement.

For purposes of calculating any vacancies, any time served in any position by personnel with higher qualifications or licensure shall count toward required hours for a position with less qualifications; by way of example, a Registered Nurse may serve the required contracted hours of a Licensed Practical Nurse. Hours related to training, orientation, continuing education, personal time off (vacation or sick time), and holidays shall not be considered vacant hours for purposes herein.

**Taxes**

The parties agree that Wellpath shall not be responsible for the payment of any property, ad valorem, or other taxes that may now or hereafter be due on or with respect to API or related to the operation or management of API, including any personal or business property taxes. Wellpath shall only be responsible for any taxes associated with its personnel, vendors, and pharmacy.

**IT/Security Expenses**

During the operation phase of this Agreement, Wellpath will be solely responsible for any and all EHR and IT changes, upgrades or expenditures.

## Appendix D - Exhibit 1

### Phase 2: Operations Budget

**Phase 2 Operating Fee:** \$1,383.82 per diem, payable for 80 available beds, for staffing as outlined in Appendix C, which will be reconciled as necessary under this Agreement, and pharmacy services.

**Phase 2 Estimated Annual Pass-Through Expenses:** \$3,266,525.00.

Passthrough Expenses Estimate		
	Year 1	Summary Description
Services	\$2,508,700	Education Services; Financial Services; Legal and Judicial Services; Information Technology; Telecommunications; Delivery Services; Advertising/Promotions; Utilities; Structure/Infrastructure/Land; Equipment/Machinery; Housekeeping national accreditation support, contracts to support hospital; Legal; Vehicle repairs and maintenance.
Commodities	\$525,800	Business supplies including paper, office products, books, and other business items needed for operations; Agriculture items such as fertilizer and plant supplies; Household / Institutional items such as cleaning, non-food supplies, and other household type items supporting operations; safety supplies such as first aid, body protection, and other items required for safety and compliance; parking lot gravel and other maintenance, plumbing supplies and items, lube oils/grease/solvents for building and maintenance; paint and preservatives used for interior and exterior maintenance; and small tools and other minor equipment.
Other	\$232,025	Patient related travel and transportation; individual assistance for patients deemed indigent per hospital policy, along with other benefits for indigent patient care as indicated per hospital policy
<b>Estimated Total</b>	<b>\$3,266,525</b>	

**Appendix E**  
**State of Alaska, Department of Health & Social Services**  
**Health Insurance Portability and Accountability Act of 1996 (HIPAA)**  
**Business Associate Agreement**

This HIPAA Business Associate Agreement is between the State of Alaska, Department of Health and Social Services ("Covered Entity" or "CE") and WellPath Recovery Solutions, LLC ("Business Associate" or "BA").

**RECITALS**

Whereas,

- A. CE wishes to disclose certain information to BA, some of which may constitute Protected Health Information owned by CE ("PHI");
- B. It is the goal of CE and BA to protect the privacy and provide for the security of PHI owned by CE that is disclosed to BA or accessed, received, stored, maintained, modified or retained by BA in compliance with HIPAA (42 U.S.C. 1320d – 3120d-8) and its implementing regulations at 45 C.F.R. 160 and 45 C.F.R. 164 (the "Privacy and Security Rule"), the Health Information Technology for Economic and Clinical Health Act of 2009 (P.L. 111-5) (the "HITECH Act"), and with other applicable laws;
- C. The purpose and goal of the HIPAA Business Associate Agreement ("BAA") is to satisfy certain standards and requirements of HIPAA, HITECH Act, and the Privacy and Security Rule, including but not limited to 45 C.F.R. 164.502(e) and 45 C.F.R. 164.504(e), as may be amended from time to time;
- D. CE may operate a drug and alcohol treatment program that must comply with the Federal Confidentiality of Alcohol and Drug Abuse Patient Records law and regulations, 42 U.S.C. 290dd-2 and 42 C.F.R. Part 2 (collectively "Part 2"); and
- E. BA may be a Qualified Service Organization ("QSO") under Part 2 and therefore must agree to certain mandatory provisions regarding the use and disclosure of substance abuse treatment information.

Therefore, in consideration of mutual promises below and the exchange of information pursuant to the BAA, CE and BA agree as follows:

1. **Definitions.**

- a. **General:** As used in this BAA, the terms "Protected Health Information," "Health Care Operations," and other capitalized terms have the same meaning given to those terms by HIPAA, the HITECH Act and the Privacy and Security Rule. In the event of any conflict between the mandatory provisions of HIPAA, the HITECH Act or the Privacy and Security Rule, and the provisions of this BAA, HIPAA, the HITECH Act or the Privacy and Security Rule shall control. Where the provisions of this BAA differ from those mandated by HIPAA, the HITECH Act or the Privacy and Security Rule but are nonetheless permitted by HIPAA, the HITECH Act or the Privacy and Security Rule, the provisions of the BAA shall control.
- b. **Specific:**
  - 1) **Business Associate:** "Business Associate" or "BA" shall generally have the same meaning as the term "business associate" at 45 C.F.R. 160.103.
  - 2) **Covered Entity:** "Covered Entity" or "CE" shall have the same meaning as the term "covered entity" at 45 C.F.R. 160.103.
  - 3) **Privacy and Security Rule:** "Privacy and Security Rule" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.

2. **Permitted Uses and Disclosures by Business Associate.**

- a. BA may only use or disclose PHI for the following purposes:
- b. BA may use or disclose PHI as permitted by law.
- c. BA agrees to make uses and disclosures and requests for PHI consistent with HIPAA, the HITECH Act and the Privacy and Security Rule.
- d. BA may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by CE, except for the specific uses and disclosures set out below.
- e. BA may disclose PHI for the proper management and administration of BA or to carry out the legal responsibilities of BA, provided the disclosures are permitted by law, or BA obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or

for the purposes for which it was disclosed to the person, and the person notified BA of any instances of which it is aware in which the confidentiality of the information has been breached.

- f. BA may provide data aggregation services related to the health care operations of CE.

3. Obligations of Business Associate.

- a. Permitted uses and disclosures: BA may only use and disclose PHI owned by the CE that it creates, receives, maintains, or transmits if the use or disclosure is in compliance with each applicable requirement of 45 C.F.R. 164.504(e) of the Privacy Rule or this BAA. The additional requirements of Subtitle D of the HITECH Act contained in Public Law 111-5 that relate to privacy and that are made applicable with respect to Covered Entities shall also be applicable to BA and are incorporated into this BAA.

To the extent that BA discloses CE's PHI to a subcontractor, BA must obtain, prior to making any such disclosure: (1) reasonable assurances from the subcontractor that it will agree to the same restrictions, conditions, and requirements that apply to the BA with respect to such information; and (2) an agreement from the subcontractor to notify BA of any Breach of confidentiality, or security incident, within two business days of when it becomes aware of such Breach or incident.

- b. Safeguards: 45 C.F.R. 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), and 164.316 (policies, procedures and documentation requirements) shall apply to BA in the same manner that such sections apply to CE, and shall be implemented in accordance with HIPAA, the HITECH Act, and the Privacy and Security Rule. The additional requirements of Title XIII of the HITECH Act contained in Public Law 111-5 that relate to security and that are made applicable to Covered Entities shall also apply to BA and are incorporated into this BAA.

Unless CE agrees in writing that this requirement is infeasible with respect to certain data, BA shall secure all paper and electronic PHI by encryption or destruction such that the PHI is rendered unusable, unreadable or indecipherable to unauthorized individuals; or secure paper, film and electronic PHI in a manner that is consistent with guidance issued by the Secretary of the United States Department of Health and Human Services specifying the technologies and methodologies that render PHI unusable, unreadable or indecipherable to unauthorized individuals, including the use of standards developed under Section 3002(b)(2)(B)(vi) of the Public Health Service Act, as added by Section 13101 of the HITECH Act contained in Public Law 111-5.

BA shall not use personally owned devices to create, receive, maintain or transmit PHI owned by CE. Devices the BA uses to create, receive, maintain or transmit CE's electronic PHI shall be owned and managed by BA or CE.

BA shall patch its operating system and all applications that receive, maintain or transmit PHI owned by CE within 90 days of the release of any patch.

BA shall keep its antivirus and antimalware installed and active. BA shall limit its use of administrative accounts for IT operations only.

- c. Reporting Unauthorized Disclosures and Breaches: During the term of this BAA, BA shall notify CE within 24 hours of discovering a Breach of security; intrusion; or unauthorized acquisition, access, use or disclosure of CE's PHI in violation of any applicable federal or state law, including security incidents.

BA shall identify for the CE the individuals whose unsecured PHI has been, or is reasonably believed to have been, Breached so that CE can comply with any notification requirements if necessary. BA shall also indicate whether the PHI subject to the Breach; intrusion; or unauthorized acquisition, access, use or disclosure was encrypted or destroyed at the time. BA shall take prompt corrective action to cure any deficiencies that result in Breaches of security; intrusion; or unauthorized acquisition, access, use, and disclosure. BA shall fulfill all breach notice requirements unless CE notifies BA that CE will take over the notice requirements. BA shall reimburse CE for all reasonable costs incurred by CE that are associated with any mitigation, investigation and notice of Breach CE undertakes or provides under HIPAA, HITECH Act, and the Privacy and Security Rule as a result of a Breach of CE's PHI caused by BA or BA's subcontractor or agent.

If the unauthorized acquisition, access, use or disclosure of CE's PHI involves only Secured PHI, BA shall notify CE within 10 days of discovering the Breach but is not required to notify CE of the names of the individuals affected.

- d. BA is not an agent of CE.
- e. BA's Agents: If BA uses a subcontractor or agent to provide services under this BAA, and the subcontractor or agent creates, receives, maintains, or transmits CE's PHI, the subcontractor or agent shall sign an agreement with BA containing

## Hospital Administration Services

substantially the same provisions as this BAA and further identifying CE as a third-party beneficiary with rights of enforcement and indemnification from the subcontractor or agent in the event of any violation of the subcontractor or agent agreement. BA shall mitigate the effects of any violation of that agreement.

- f. Availability of Information to CE: Within 15 days after the date of a written request by CE, BA shall provide any information necessary to fulfill CE's obligations to provide access to PHI under HIPAA, the HITECH Act, or the Privacy and Security Rule.
- g. Accountability of Disclosures: If BA is required by HIPAA, the HITECH Act, or the Privacy or Security Rule to document a disclosure of PHI, BA shall make that documentation. If CE is required to document a disclosure of PHI made by BA, BA shall assist CE in documenting disclosures of PHI made by BA so that CE may respond to a request for an accounting in accordance with HIPAA, the HITECH Act, and the Privacy and Security Rule. Accounting records shall include the date of the disclosure, the name and if known, the address of the recipient of the PHI, the name of the individual who is subject of the PHI, a brief description of the PHI disclosed and the purpose of the disclosure. Within 15 days of a written request by CE, BA shall make the accounting record available to CE.
- h. Amendment of PHI: Within 30 days of a written request by CE or an individual, BA shall amend PHI maintained, transmitted, created or received by BA on behalf of CE as directed by CE or the individual when required by HIPAA, the HITECH Act or the Privacy and Security Rule, or take other measures as necessary to satisfy CE's obligations under 45 C.F.R. 164.526.
- i. Internal Practices: BA shall make its internal practices, books and records relating to the use and disclosure of CE's PHI available to CE and all appropriate federal agencies to determine CE's and BA's compliance with HIPAA, the HITECH Act and the Privacy and Security Rule.
- j. Risk Assessment: BA shall biennially conduct a thorough assessment of the potential risks to and vulnerabilities of the confidentiality, integrity, and availability of CE's PHI that BA receives, stores, transmits, or has access to. BA shall provide CE, upon request, with a written report detailing the results of the risk assessment within 5 days.
- k. To the extent BA is to carry out one or more of CE's obligations under Subpart E of 45 C.F.R. Part 164, BA must comply with the requirements of that Subpart that apply to CE in the performance of such obligations.
- l. Audits, Inspection and Enforcement: CE may, after providing reasonable notice to the BA, conduct an inspection of the facilities, systems, books, logs and records of BA that relate to BA's use of CE's PHI, including inspecting logs showing the creation, modification, viewing, and deleting of PHI at BA's level to determine BA's compliance with HIPAA, the HITECH Act and the Privacy and Security Rule. Failure by CE to inspect does not waive any rights of the CE or relieve BA of its responsibility to comply with this BAA. CE's failure to detect or failure to require remediation does not constitute acceptance of any practice or waive any rights of CE to enforce this BAA.

Notwithstanding BA's obligation to report under paragraph 3.c of this BAA, BA shall provide a monthly report to CE detailing the unauthorized, or reasonable belief of unauthorized, acquisition, access, use, or disclosure of CE's PHI, including any unauthorized creation, modification, or destruction of PHI and unauthorized login attempts. BA shall include privileged and nonprivileged accounts in its audit and report, indicating the unique individual using the privileged account. BA shall also indicate whether CE's PHI subject to unauthorized activity was encrypted or destroyed at the time of the unauthorized activity.

BA shall provide a yearly report to CE that lists the names of all individuals with technical or physical access to CE's PHI and the scope of that access.

- m. Restrictions and Confidential Communications: Within 10 business days of notice by CE of a restriction upon use or disclosure or request for confidential communications pursuant to 45 C.F.R.164.522, BA shall restrict the use or disclosure of an individual's PHI. BA may not respond directly to an individual's request to restrict the use or disclosure of PHI or to send all communication of PHI to an alternate address. BA shall refer such requests to the CE so that the CE can coordinate and prepare a timely response to the requesting individual and provide direction to the BA.
  - n. Indemnification: BA shall indemnify and hold harmless CE for any civil or criminal monetary penalty or fine imposed on CE for acts or omissions in violation of HIPAA, the HITECH Act, or the Privacy or Security Rule that are committed by BA, a member of its workforce, its agent, or its subcontractor.
4. Obligations of CE. CE will be responsible for using legally appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to BA under the BAA until the PHI is received by BA. CE will not request BA to use or

disclose PHI in any manner that would not be permissible under HIPAA, the HITECH Act or the Privacy and Security Rule if done by CE.

5. Termination.

- a. Breach: A breach of a material term of the BAA by BA that is not cured within a reasonable period of time will provide grounds for the immediate termination of the contract.
- b. Reasonable Steps to Cure: In accordance with 45 C.F.R. 164.504(e)(1)(ii), CE and BA agree that, if it knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of the other party's obligation under the BAA, the nonbreaching party will take reasonable steps to get the breaching party to cure the breach or end the violation and, if the steps taken are unsuccessful, terminate the BAA if feasible, and if not feasible, report the problem to the Secretary of the U.S. Department of Health and Human Services.
- c. Effect of Termination: Upon termination of the contract, BA will, at the direction of the CE, either return or destroy all PHI received from CE or created, maintained, or transmitted on CE's behalf by BA in any form. Unless otherwise directed or required by law, BA is prohibited from retaining any copies of PHI received from CE or created, maintained, or transmitted by BA on behalf of CE. If destruction or return of PHI is not feasible, BA must continue to extend the protections of this BAA to PHI and limit the further use and disclosure of the PHI. The obligations in this BAA shall continue until all of the PHI provided by CE to BA is either destroyed or returned to CE.

6. Amendment. The parties acknowledge that state and federal laws relating to electronic data security and privacy are evolving, and that the parties may be required to further amend this BAA to ensure compliance with applicable changes in law. Upon receipt of a notification from CE that an applicable change in law affecting this BAA has occurred, BA will promptly agree to enter into negotiations with CE to amend this BAA to ensure compliance with changes in law.
7. Ownership of PHI. For purposes of this BAA, CE owns the PHI it transmits to BA or that BA receives, creates, maintains or transmits on behalf of CE.
8. Litigation Assistance. Except when it would constitute a direct conflict of interest or when advised otherwise by its legal counsel, each party will make itself available to assist the other in any administrative or judicial proceeding by testifying as witness as to an alleged violation of HIPAA, the HITECH Act, the Privacy or Security Rule, or other law relating to security or privacy.
9. Regulatory References. Any reference in this BAA to federal or state law means the section that is in effect or as amended.
10. Interpretation. This BAA shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy and Security Rule and applicable state and federal laws. The parties agree that any ambiguity in BAA will be resolved in favor of a meaning that permits the CE to comply with and be consistent with HIPAA, the HITECH Act, and the Privacy and Security Rule. The parties further agree that where this BAA conflicts with a contemporaneously executed confidentiality agreement between the parties, this BAA controls.
11. No Private Right of Action Created. This BAA does not create any right of action or benefits for individuals whose PHI is disclosed in violation of HIPAA, the HITECH Act, the Privacy and Security Rule or other law relating to security or privacy.
12. Privacy and Security Point of Contact. All communications occurring because of this BAA shall be sent to [HSS-Security@alaska.gov](mailto:HSS-Security@alaska.gov) in addition to the CE.

In witness thereof, the parties hereto have duly executed this BAA as of the effective date.

**Appendix F**  
**Certification Regarding Debarment, Suspension, Ineligibility**  
**and Voluntary Exclusion Lower Tier Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 2 CFR Part 2998.

**Before completing certification, read the instructions on the following page,**  
**which are an integral part of the certification**

1. The prospective recipient of Federal assistance funds certifies, by the signature below, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective recipient of Federal assistance funds is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this Proposal.

---

Name and Title of Authorized Representative

---

Signature

---

Date



**Instructions for Certification**

1. By signing and submitting this Agreement, the prospective recipient of Federal assistance funds is providing the certification as set out below.
2. The certification in this class is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department of Labor (DOL) may pursue available remedies, including suspension and/or debarment.
3. The prospective recipient of Federal assistance funds shall provide immediate written notice to the person to whom this Agreement is delivered if at any time the prospective recipient of Federal assistance funds learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Agreement is delivered for assistance in obtaining a copy of those regulations.
5. The prospective recipient of Federal assistance funds agrees by signing this Agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DOL.
6. The prospective recipient of Federal assistance funds further agrees by signing this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous.  
A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to check the List of Parties Excluded from Procurement or Non-procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the DOL may pursue available remedies, including suspension and/or debarment.

**EXHIBIT F**

# Request for Alternate Procurement

Complete all required and/or applicable fields below, save, and email to [doa.dgs.purchasing.statewide@alaska.gov](mailto:doa.dgs.purchasing.statewide@alaska.gov).  
Include supporting materials and factual evidence after this form or attach separately.

RAP Number	2019 0600 4181
Department	Health & Social Services
Type	Single Source (AS 36.30.300 / 2 AAC 12.410)
Date Required	02/07/2019
Total Estimated Cost	\$84,000,000.00
Vendor Name	WellPath Recovery Solutions

## Executive Summary

DHSS is requesting a single source procurement of full hospital administration services for the Alaska Psychiatric Institute (API), to be implemented immediately. API is currently under 4 grievous Letters of Correction from 4 different authorities on serious issues of patient safety, and has proven incapable of corrective action; resulting in imminent/severe risk of closure which would result in loss of Federal Funding (\$37M annually), and shipping of patients to out of state facilities, at State's GF expense. There is no other vendor with inpatient psychiatric hospital administration experience and immediate capacity to meet this need.

## Preparer Information

Alternate procurements must be conducted by procurement staff with SSoA procurement certification appropriate for the dollar amount.

Preparer Name	Susan Jabal	Certification Level	Level III
Preparer E-mail	susan.jabal@alaska.gov		

## Contact Information

If you would like us to contact someone **other** than the preparer if we have questions or need further information, please provide their name and contact details below.

Contact Name / Phone	
----------------------	--

## Requesting Agency Approval

May not be delegated below Administrative Services Director for small procurements without prior approval from SSoA.

Approver's Name / Title	Sana Efird, Assistant Commissioner
-------------------------	------------------------------------

By entering my initials below, I represent that I am authorized to approve this Request for Alternate Procurement. I confirm that, to the best of my knowledge, all information and evidence submitted in support of this request is accurate and true.

Approver's Initials

Date

## **Single Source / Limited Competition / Emergency Evidence**

For **Single Source**, **Limited Competition**, or **Emergency** RAP types, you must include evidence consisting of material facts sufficient to independently determine that the findings of fact supporting the RAPs approval are true and accurate. Factual evidence may consist of written documents, records, supporting data, affidavits, or other information proving that the findings of fact are true and accurate.

For **Single Source** and **Limited Competition** RAP types, for each piece of evidence submitted, please indicate whether it supports the RAP being in the state's best interest or whether it supports the procurement being impractical to compete using a more competitive procurement method, or both. Remember, evidence supporting "state's best interest" must describe the specific interests affected.

Continue evidence list on new page if necessary.

<b><u>Evidence</u></b>	<b><u>State's Best Interest</u></b>	<b><u>Impractical to Compete</u></b>
Sole Source Justification Memo, Albert Wall, DHSS Deputy Commissioner	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
WellPath Recovery Solutions Proposal	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Commissioner's declaration per AS 47.32.140(d) and (e)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
ASPS	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
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	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>

**The following sections are for completion by Shared Services of Alaska only.**

Reviewed by:

Recommended Action:

**Delegated Authority**

If this request is approved, the procurement must be made under these conditions:

This authority is limited to the goods or services and vendor(s) specified in the RAP and is not to exceed the TOTAL ESTIMATED COST entered on page 1 unless a different amount is entered by SSOA in the SPECIFIC DELEGATION AUTHORITY/RESTRICTIONS/NOTES below.

This authority expires in 60 DAYS from the date of approval.

For goods and/or services related to INFORMATION TECHNOLOGY (IT), this authority is contingent on the receipt of any additional approvals required by your agency and the Office of Information Technology (OIT).

The agency has until the AUTHORITY EXPIRES ON date to establish a contract or amend the contract for these terms or services.

Any contract established must conform to AAM 81.

Prior to issuing an amendment, cost and pricing data must be obtained from the contractor per AS 36.30.400.

Once a contract is established or amended, the agency's normal authority to process unanticipated amendments under 2 AAC 12.485 apply.

**Specific Delegation Authority/Restrictions/Notes**

Proposal Evaluation was also considered in this approval.

**Chief Procurement Officer (CPO) Signature**

By signature below, I concur with the RECOMMENDED ACTION and any SPECIFIC DELEGATION AUTHORITY/RESTRICTIONS/NOTES entered related to this request.

Signature



# Request for Alternate Procurement

Complete all required and/or applicable fields below, save, and email to [doa.dgs.purchasing.statewide@alaska.gov](mailto:doa.dgs.purchasing.statewide@alaska.gov). Include supporting materials and factual evidence after this form or attach separately.

RAP Number	2019 0600 4181
Department	Health & Social Services
Type	Single Source (AS 36.30.300 / 2 AAC 12.410)
Date Required	02/07/2019
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## Preparer Information

Alternate procurements must be conducted by procurement staff with SSoA procurement certification appropriate for the dollar amount.

Preparer Name	Susan Jabal	Certification Level	Level III
Preparer E-mail	susan.jabal@alaska.gov		

## Contact Information

If you would like us to contact someone **other** than the preparer if we have questions or need further information, please provide their name and contact details below.

Contact Name / Phone	
----------------------	--

## Requesting Agency Approval

May not be delegated below Administrative Services Director for small procurements without prior approval from SSoA.

Approver's Name / Title	Sana Efird, Assistant Commissioner
-------------------------	------------------------------------

By entering my initials below, I represent that I am authorized to approve this Request for Alternate Procurement. I confirm that, to the best of my knowledge, all information and evidence submitted in support of this request is accurate and true.

Approver's Initials

Date

2/7/19

# DHSS Authority to Seek Professional Services - ASPS -

ASPS #  
(Assigned by  
Procurement)

0619-131

<b>Division/Unit Number</b> <b>Alaska Psychiatric Institute</b>		<b>Description of Services / Project</b> <b>API Administrative Management Services</b>	
<b>Proposed Solicitation Type</b> (Assigned by Procurement) <b>Sole Source</b>		<b>Does ASPS replace an existing or expired contract?</b> <b>V/N</b> (Previous contractor and contract number) <b>No</b>	
<b>Period of Performance:</b> <input type="checkbox"/> <b>One-time Service</b> <b>Start Date:</b> <b>End Date:</b>		<b>- OR -</b> <input type="checkbox"/> <b>Ongoing Service</b> <b>Initial Period of Performance:</b> 2/5/19 – 6/30/19 <b># and length of Renewal(s):</b> plus 2 renewal options (FY20, FY21)	
<b>Funding Source</b> (Capital, Federal, GF, etc)		<b>Total Project Budget</b> (total including all renewals) <b>\$ 84,000,000</b>	
<b>Accounting Elements</b> <u>Fund</u> <u>Unit</u> <u>Appropriation</u> <u>Object</u> <u>Location</u> <u>Activity</u> <u>Program</u>			
<b>Project Director</b> <b>Albert Wall</b>		<b>Contract Administrator</b> <b>Susan Jabal</b> (Assigned by Procurement)	
<b>Purpose of Contract (Provide a brief description of the type of services required)</b>  The contractor will provide contractual administrative management services at the Alaska Psychiatric Institute (API) beginning Tuesday, February 5, 2019. The initial period of performance will include hospital stabilization, achievement of compliance with all governing bodies, evaluation of operations staffing and training, all with a priority of patient safety.  The renewal years will involve planning and achievement of self-sustainability; after which a new agreement will be implemented to facilitate the determined relationship between the contractor and the State of Alaska.			
(If additional space is required, please add pages)			
<b>Department of Health and Social Services – Approval Block</b>			
<b>The below signatures are required prior to submitting to the Procurement office:</b>			
<b>Albert Wall, Deputy Commissioner:</b> _____		<b>Date:</b> 02/01/19	
<b>Sana Efird, Assistant Commissioner:</b> _____		<b>Date:</b> 2/1/19	
<b>The below signatures below will be obtained by Procurement, after review, if applicable:</b>			
<b>Scott McCutcheon, Department IT Manager:</b> _____ (required for IT related projects)		<b>Date:</b> _____	
<b>Amy Burke, Chief Facilities Section:</b> _____ (required for Capital funded projects)		<b>Date:</b> _____	

## **EXHIBIT G**



# ALASKA STATE LEGISLATURE



## House of Representatives

Jason Soza  
Chief Procurement Officer  
Department of Administration  
PO Box 110210  
Juneau, AK 99801-0210

Dear Mr. Soza,

Thank you for your participation in the April 2 oversight hearing regarding the single-source procurement of Wellpath services at the Alaska Psychiatric Institute (API). In light of new information brought forth at that hearing, we are writing to request that you halt Phase 2 of the contract with Wellpath to take over management and require any consideration of privatization services of the facility be executed through the competitive procurement process in Alaska Statutes and regulations.

We are concerned that during the single-source procurement process the Department of Health and Social Services (DHSS) failed to inform you of Wellpath's record of lawsuits and patient deaths resulting from negligence and inadequate staffing. Department leadership should have provided that information to you when they requested a no-bid contract. API is a unique program and facility in Alaska with an especially vulnerable population which is not able to effectively advocate for themselves because of the very illnesses they are in API to treat. As such, we have a special responsibility to ensure due diligence is

applied in selecting the contractor to run API. In failing to provide you information on Wellpath's troubled legal and safety history, they failed to properly inform you of the risks associated with this contract to hand-over management of API to a for-profit company based in the lower-48.

Additionally, DHSS should have also informed you that there were other vendors capable of providing the services outlined in the contract. As is described in the attached letter, Providence Health and Services previously offered to run API or help the Department implement reforms. There are other organizations also capable of providing either turn-around and operations services to the State of Alaska which should be explored. The lack of integrity raises concerns about the procurement process when DHSS excluded Alaska's largest and most experienced non-profit health care provider in favor of a for-profit company with a troubling record of performance.

The Department's failure to disclose such information is even more disturbing considering that DHSS leadership sought a single-source procurement—rather than a shorter-term emergency procurement—with the express purpose of facilitating permanent transfer of API management to Wellpath. We believe it is inappropriate and possibly illegal to structure procurement to avoid competition.

Further, it is concerning that the department suggested that continuity of management was a reasonable justification for issuing a single source contract valued at \$225 million over 5 years. If Wellpath truly is the best vendor to run API, they should be more than capable of facilitating a short-term turn-around contract for the remainder of FY19 and then be able to use that success as the rationale for securing a longer-term contract to run API. If they aren't capable of providing the turn-around they have promised, then they should be more than willing to compete for the right to run API.

Finally, Wellpath's record to date only confirms doubt about their capabilities. API has extremely low capacity and has lost even more psychiatrists. There is no significant progress toward API reaching capacity, yet the terms of the proposed Phase 2 contract would let Wellpath collect income for "available"

beds, even if beds are not filled; cumulatively leaving the state exposed to nearly a quarter-billion dollars in contract obligations over five years without any assurance of performance from Wellpath.

As you testified, you have the authority to terminate contracts when the businesses in question are unresponsive or not responsible. We urge you to halt work on Phase 2 privatization and require that any transition in management of API from the state to a private entity be offered in a competitive bidding process.

Thank you for your long service to the State of Alaska, including during this very challenging period for API.

Sincerely,



Ivy Spohnholz

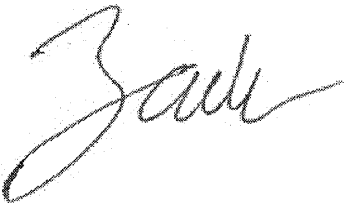
Tiffany Zulkosky

Co-Chairs, Health and Social Services Committee



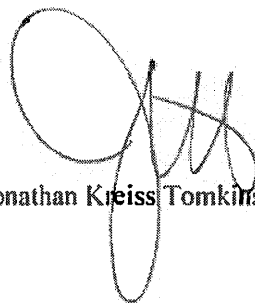
Matt Claman

Chair, Judiciary Committee



Zack Fields

Co-Chairs, State Affairs Committee



Jonathan Kreiss Tomkins



March 6, 2019

The Honorable Ivy Spohnholz  
State Representative  
Co-Chair, House H&SS Committee  
Alaska State Legislature  
State Capitol Room 421  
Juneau, AK 99801

The Honorable Tiffany Zulkosky  
State Representative  
Co-Chair, House H&SS Committee  
Alaska State Legislature  
State Capitol Room 416  
Juneau, AK 99801

Dear Representatives Spohnholz and Zulkosky:

Re: Ltr to Providence from Rep. Zulkosky and Rep. Spohnholz

Providence Health & Services has a long history of serving Alaska, and set the standard for modern health care in the state. Today, Providence is the state's leading health care and behavioral health provider and its largest private employer with nearly 5,000 caregivers across the state.

In 2002 Providence Alaska Medical Center opened the state's only Psychiatric Emergency Department. The department is designed to serve the community as a single-point-of-entry for urgent psychiatric services, supporting Alaska Psychiatric Institute (API) by avoiding hospitalizations and providing evaluation and treatment for those experiencing a mental health crisis.

As API has been able to admit and treat fewer Alaskans, the length of stay for patients awaiting transfer to API has significantly increased. In 2015, 294 patients waited at Providence for longer than 24 hours. In 2018 that number grew to 639 patients; one person waited 333 hours. These patients are not being treated in appropriate care settings, thereby placing both them and their clinical caregivers at greater risk. This situation is not unique, as our colleagues across the state are struggling with growing demand for behavioral health services and ongoing bed closures at API.

This is not a crisis born overnight. Gov. Walker and Commissioner Davidson deserve recognition for addressing the need for a culture shift at API. We also appreciate Gov. Dunleavy, Commissioner Crum, and Deputy Commissioner Wall for their efforts to quickly address the serious safety concerns for patients and caregivers at API and to stabilize conditions and the delivery of care at the facility. The community will also benefit from open conversations about API's long-term operations.

To answer your questions about Providence's behavioral health experience:

1. Has Providence Alaska ever offered to take over management of API?
2. If so, when were the offers made and to whom?

Conversations about the best use and operations of API have been ongoing for many years, and Providence has long been transparent about a potential partnership and/or agreement with the state. Providence was engaged in the feasibility report issued in 2017 and has served on numerous task forces and committees in an attempt to chart the best path forward. Recent meetings with administration personnel that specifically included the management of API:

- Bruce Lamoureux, previous CEO of Providence Health & Services Alaska, met with Commissioner Davidson on May 31, 2016, to inform her that Providence would have an interest in operating API. At the time, DHSS was working on the privatization feasibility study and Lamoureux shared the interest in anticipation of the report findings, and a corresponding Request for Proposal. DHSS chose not to privatize API and no RFP was issued.
- On Sept. 6, 2018, Emily Ford, our advocacy manager, and I met with Commissioner Davidson and expressed Providence's interest in partnering on the long-term operations of API.
- After a missed message from the day prior, I spoke with Deputy Commissioner Wall on Feb. 1. The deputy commissioner was calling hospital and facility CEOs about the critical concerns regarding safety at API and the threat of losing CMS certification. I offered Providence's help to the administration and to Deputy Commissioner Wall in any way possible. As part of this conversation, I connected him with Arpan Waghray, MD, chief medical officer for the Providence St. Joseph Health Well Being Trust.
- Later that day, Waghray and Deputy Commissioner Wall discussed the current crisis at API, the potential loss of CMS certification and how Providence could potentially assist the state with the long-term operations of the facility. The deputy commissioner stressed the urgent need for immediate stabilization, but indicated a willingness to partner on acute, civil commitment and post-acute care to engage Providence and others in creating a long-term strategy for API.
- On Feb. 14, 2019, I met with Commissioner Crum to discuss the state's behavioral health network, Providence's delivery of behavioral health services, and the future of API. I was not yet aware of the full contract with Wellpath, but did share with the commissioner that I understood the need to bring in a firm like Wellpath on an emergent basis to address safety and certification issues facing API. I reiterated our offer to provide the resources of Providence in partnership with the state and community partners to develop a long-term solution for API and that we wanted to be considered for any RFPs for the ongoing management of the facility when that opportunity became available. I also discussed similar facility-management and operating agreements between Providence and the communities of Seward, Kodiak, and Valdez.
- On Feb. 14, 2019, Laurie Herman, Providence Alaska consultant and lobbyist, and I met with Gov. Dunleavy and reiterated Providence's willingness to partner with the state on the operations of API.

**3. What experience does Providence health system have in administering behavioral health institutions?**

Providence is the largest and most comprehensive provider of behavioral health services in Alaska including outpatient, sub-acute, inpatient and residential treatment, primarily on a voluntary basis. We continue to work to integrate behavioral health in primary care settings, and to provide comprehensive and compassionate care to children who have experienced trauma from abuse at AlaskaCares. Our services include:

#### **Outpatient**

- **Breakthrough:** Chemical dependency treatment for patients 18-years-old and older. Provides partial hospitalization and intensive outpatient education and support services for those with chemical dependencies and their families.
- **Providence Medical Group Behavioral Health:** Outpatient psychiatric care serving all ages, providing medication management, psychiatric assessment, neuropsychological/psychological testing, and group, individual, and family therapy.
- **Psychiatric Emergency Department:** Psychiatric assessments, 24-hour psychiatric observation, and referrals for all ages in an emergency or crisis. Operating a 24-hour crisis line. Seven patient beds.

#### **Sub-Acute**

- **Directions- (Crisis Recovery Center):** Adolescent sub-acute voluntary psychiatric treatment, serving patients age 12 to 17. Residential short-term treatment, providing an alternative to inpatient hospitalization for emotional and behavioral issues and early intervention for adolescents through individual, group and family therapy. Average length of stay is 15 to 30 days. Eight patient beds.
- **Compass- (Crisis Recovery Center):** Adult sub-acute voluntary psychiatric treatment for patients age 18 and older. Stabilizes psychiatric symptoms and improves coping skills to effectively manage psychiatric symptoms and prevent frequent hospitalization. Average length of stay is three to seven days. Eight patient beds.

#### **Inpatient**

- **Adult Mental Health Unit:** Adult voluntary inpatient program serving patients age 18 and older by providing crisis stabilization, treatment programs, therapy, discharge planners, medication management, individual and group therapy. Average length of stay is five to seven days. Twelve patient beds.
- **Discovery: Adolescent Mental Health Unit:** Acute voluntary inpatient program for adolescents age 13 to 18. Provides intensive crisis intervention, stabilization, and behavioral health treatment. Average length of stay is 10 to 14 days. Fifteen patient beds.

#### **Residential**

- **Adolescent Residential Treatment:** Long-term psychiatric residential treatment serving girls age 12 to 18 who have been hospitalized and are unable to maintain safety in the outpatient setting. Provides individual and family therapy and academic services. Average length of stay is one-year. Ten patient beds.

#### **4. What successes has Providence had in operating behavioral health care options in Alaska and in other states?**

In addition to our strong behavioral health foundation in Alaska, we are part of the larger Providence St. Joseph Health system that serves seven states. We also created the Providence St. Joseph Well Being Trust to identify and advance innovative solutions in mental health.

Across our system, we are leading the way by integrating behavioral health into primary care settings, creating additional screening and assessment tools for caregivers, resources for patient and

family education and expanding treatment opportunities. We are creating a framework where the expertise in each of our regions informs best practices, sets standardization and continues to raise the bar as a leader in the delivery of behavioral health care.

Our services continually expand to meet community need, including behavioral health treatment in response to the opioid epidemic, increasing depression and anxiety in teens, and growing resources to treat and identify post-partum depression in new moms. As part of our Health 2.0 Initiative we have expanded tele-psychiatry services to 21 hospitals and emergency rooms across the West Coast.

In addition to the Alaska programs above, Providence St. Joseph Health successfully operates voluntary and involuntary inpatient mental health units, including 11 psychiatric units, providing services ranging from pediatric to geriatric care. We have experience collaborating with state governments to provide behavioral health services.

Providence Health & Services Alaska currently has operating agreements with the communities of Seward, Kodiak, and Valdez to provide management and operations of Providence Seward Medical Center, Providence Kodiak Island Medical Center and Providence Valdez Medical Center, respectively.

5. Would Providence Alaska currently be interested in managing the Alaska Psychiatric Institute?  
If so, under what terms would you prefer?

Yes, Providence would like to be included in the discussions about long-term operations of API and to be offered an opportunity to present a proposal. A stable, safe and healing environment at API is the primary concern for us all. Providence has a long history in Alaska and a steadfast commitment to provide care to all Alaskans. Caring for the poor and vulnerable is at the core of who we are and will never change. API has serious and immediate challenges that require attention and a need for a consistent long-term vision in order to be successful. Outlining a specific proposal in this letter, separate from any discussion about this long-term vision, is not possible. However we will continue to stand by the state, offer to partner with the state and others in solutions to support API, its caregivers, and Alaskans in crisis, in any way that we can, and extend this offer to Wellpath as well as they look toward the future.

Sincerely,

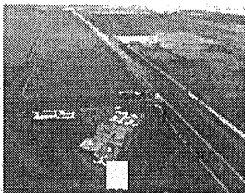


Preston M. Simmons, DSc., MHA, FACHE  
Chief Executive, Alaska  
Providence St. Joseph Health

# Correct Care Solutions profited \$546,000 by understaffing in violation of state contract

Lucas Daprite, lucas.daprite@tcpalm.com

Published 4:00 a.m. ET Jan. 21, 2018 | Updated 12:45 p.m. ET Feb. 1, 2018

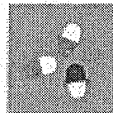


(Photo: PATRICK DOVE/TCPALM)

## About this series

Florida's privatized Treasure Coast Forensic Treatment Center is tasked with restoring people's mental health enough to stand trial on felonies, and housing those found not guilty by reason of insanity. [TCPalm's investigation \(/story/news/investigations/2018/01/21/treasure-coast-mental-hospital-not-enough-staff-training-equipment-funding-tcpalm-investigation-find/921183001/\)](#) found the mental institution:

- Is dangerously understaffed, with at least one patient killed and several employees maimed.
- Has [administered drugs in violation of state rules \(/story/news/investigations/2018/01/21/dangerous-detention-treasure-coast-mental-hospital-drug-violations-may-break-state-law/926704001/\)](#) and potentially state law.
- [Taxes 911 with daily calls \(/story/news/investigations/2018/01/22/dangerous-detention-treasure-coast-mental-hospital-911-calls-tax-first-responders/920227001/\)](#), over three times more than the state's three other mental hospitals — combined.
- Doesn't work with prosecutors to punish its most violent attackers.
- Has a cheaper, more effective alternative the Florida House rejected in 2011.



Florida has fined Treasure Coast Forensic Treatment Center nearly \$700,000 over 10 years for not having the minimum number of employees required in its state contract.

But understaffing is good for the mental institution's bottom line. The center saves \$4 in payroll for every \$1 it spends on fines, TCPalm extrapolated from a 17-month period, the only available state data that details fines for specific job vacancies.

**Dangerous Detention:** [Treasure Coast mental hospital lacks staff, training, licensing, funding \(/story/news/investigations/2018/01/21/treasure-coast-mental-hospital-not-enough-staff-training-equipment-funding-tcpalm-investigation-find/921183001/\)](#)

Correct Care Solutions saved \$545,801 on payroll — enough to cover almost a decade's worth of fines — from July 2015 to December 2016 alone, TCPalm found. Filled, those positions would've cost \$727,430 in payroll, but left vacant, they cost \$181,629 in fines.

**More:** [See the center's location on a map \(https://www.google.com/maps/d/viewer?mid=1bfYMPaC0a5PDxT5LKEup7C1d5w6XhPg9&usp=sharing\)](https://www.google.com/maps/d/viewer?mid=1bfYMPaC0a5PDxT5LKEup7C1d5w6XhPg9&usp=sharing)


If that ratio represented an average, understaffing would have saved the center \$2.4 million in 10 years. That almost certainly is an understatement, as it does not account for hiring and training costs and short-term vacancies that are exempt from fines.

Fines aren't the only consequence of understaffing. Several former employees said understaffing contributes to an unnecessarily dangerous workplace that results in workers' compensation settlements, which have totaled \$1 million since 2007.



Combine the cost of fines and workers' compensation settlements, and the center still would have profited \$1.4 million.

It's unclear whether the center or its insurance company pays those settlements.



## About the center

**Opened:** 2007, to treat Florida's skyrocketing number of mentally ill criminal defendants

**Location:** 96 S.W. Allapattah Road, Indiantown, 5 miles west of Interstate 95, just south of Martin/St. Lucie county line, adjacent to Martin Correctional Institution state prison

**Type:** Male only, maximum security

**Capacity:** 208 beds; can max out at 256

**Staff:** State requires 282, but actual amount varies

**Operator:** The GEO Group of Boca Raton (2007-14), which spun the hospital off to Correct Care Solutions of Nashville, with much the same staff

**Overseer:** Florida Department of Children and Families

**Contract:** \$255 million for 10 years, up for renewal in March

**Annual revenue:** \$547 million, D&B Hoovers estimates

## Read more

- [Treasure Coast mental hospital drug violations may break state law \(https://www.tcopalm.com/story/news/investigations/2018/01/21/dangerous-detention-treasure-coast-mental-hospital-drug-violations-may-break-state-law/926704001/\)](https://www.tcopalm.com/story/news/investigations/2018/01/21/dangerous-detention-treasure-coast-mental-hospital-drug-violations-may-break-state-law/926704001/)
- [Mental hospital failed to report 11 assaults, employee misconduct to DCF \(https://www.tcopalm.com/story/news/investigations/2018/01/21/dangerous-detention-treasure-coast-mental-hospital-failed-report-11-assaults-employee-misconduct-dcf/930886001/\)](https://www.tcopalm.com/story/news/investigations/2018/01/21/dangerous-detention-treasure-coast-mental-hospital-failed-report-11-assaults-employee-misconduct-dcf/930886001/)
- [Treasure Coast mental hospital lacks staff, training, licensing, funding \(https://www.tcopalm.com/story/news/investigations/2018/01/21/treasure-coast-mental-hospital-not-enough-staff-training-equipment-funding-icpalm-investigation-find/921183001/\)](https://www.tcopalm.com/story/news/investigations/2018/01/21/treasure-coast-mental-hospital-not-enough-staff-training-equipment-funding-icpalm-investigation-find/921183001/)
- [Mental hospital's 911 calls tax first responders \(https://www.tcopalm.com/story/news/investigations/2018/01/22/dangerous-detention-treasure-coast-mental-hospital-911-calls-tax-first-responders/920227001/\)](https://www.tcopalm.com/story/news/investigations/2018/01/22/dangerous-detention-treasure-coast-mental-hospital-911-calls-tax-first-responders/920227001/)

Read or Share this story: <https://www.tcopalm.com/story/news/investigations/2018/01/21/dangerous-detention-treasure-coast-mental-hospital-profits-understaffing-despite-fines-workers-comp/922682001/>

## **EXHIBIT H**

**Adam Crum**  
Commissioner

dhss.alaska.gov



**Department of Health  
and Social Services**

Anchorage, Alaska

**STATE OF ALASKA**

**PRESS RELEASE**

**FOR IMMEDIATE RELEASE**

Contact: Clinton Bennett, DHSS, (907) 269-4996, [clinton.bennett@alaska.gov](mailto:clinton.bennett@alaska.gov)

**API accreditation renewed by The Joint Commission**

April 12, 2019, ANCHORAGE — On April 3, 2019 the Alaska Psychiatric Institute (API) received notification that its accreditation has been renewed for psychiatric care from The Joint Commission. The three-year accreditation is effective Dec. 15, 2018.

Commissioner Adam Crum said, "I am very pleased that API has once again received its Behavioral Health Care Accreditation from The Joint Commission as we were in imminent danger of losing that accreditation. This provides further evidence that the actions we've taken over the last few months are making positive improvements for our patients and staff."

As part of the process for accreditation, a rigorous on-site survey was conducted in December 2018 to evaluate compliance with The Joint Commission's standards for psychiatric hospitals. At that time, two requirements for improvement were identified in the areas of medical staff and physical environment. These deficiencies were successfully addressed by API and Wellpath with confirmation by The Joint Commission through further on-site visits and review of documentation provided as evidence of compliance with the standards.

The Joint Commission – an independent, nonprofit organization – evaluates health care organizations on standards related to care, treatment and services; environment of care; leadership; and screening procedures for early detection of imminent harm. Accreditation plays a critical part in providing standards for care. Meeting these standards has a positive impact on licensure and certification for federal funding.

The commission noted that it is recommending API for continued Medicare certification to the Centers for Medicare and Medicaid services (CMS).

Commissioner Crum said, "While this accreditation is a step in the right direction we continue to work daily to improve patient and staff safety as well as striving towards receiving continued federal certification and full licensure from the State of Alaska."

The full Quality Report issued by The Joint Commission for the Alaska Psychiatric Institute is available online at <https://cl-pdfv10.ae-admin.com/qualitycheck/files/74b1624acc.pdf>.

# # #

## **EXHIBIT I**

**Molly Brown**

---

**Subject:** FW: JC Accreditation - 3 Years

**From:** Carmichael, Gavin H (HSS)  
**Sent:** Monday, April 08, 2019 1:39 PM  
**To:** HSS All\_API\_Staff <[all\\_api\\_staff@alaska.gov](mailto:all_api_staff@alaska.gov)>  
**Cc:** Wall, Albert E (HSS) <[a.wall@alaska.gov](mailto:a.wall@alaska.gov)>; Russell, Laura O (HSS) <[laura.russell@alaska.gov](mailto:laura.russell@alaska.gov)>; Bookman, Steven J (LAW) <[steven.bookman@alaska.gov](mailto:steven.bookman@alaska.gov)>; George Gintoli <[GGintoli@wellpath.us](mailto:GGintoli@wellpath.us)>; cwoulard@wellpath.us; Cassandra Newkirk <[CNewkirk@wellpath.us](mailto:CNewkirk@wellpath.us)>; Kerry Mangold <[kmangold@wellpath.us](mailto:kmangold@wellpath.us)>  
**Subject:** JC Accreditation - 3 Years

Team,

Congratulations! Your hard work and dedication has paid off.

Last week we received notification from the Joint Commission that we are accredited by the Joint Commission through December 15, 2021.

As a result, the JC will be recommending "Deemed Status" to CMS.

Congratulations, and thank you for your hard work and dedication.

Gavin

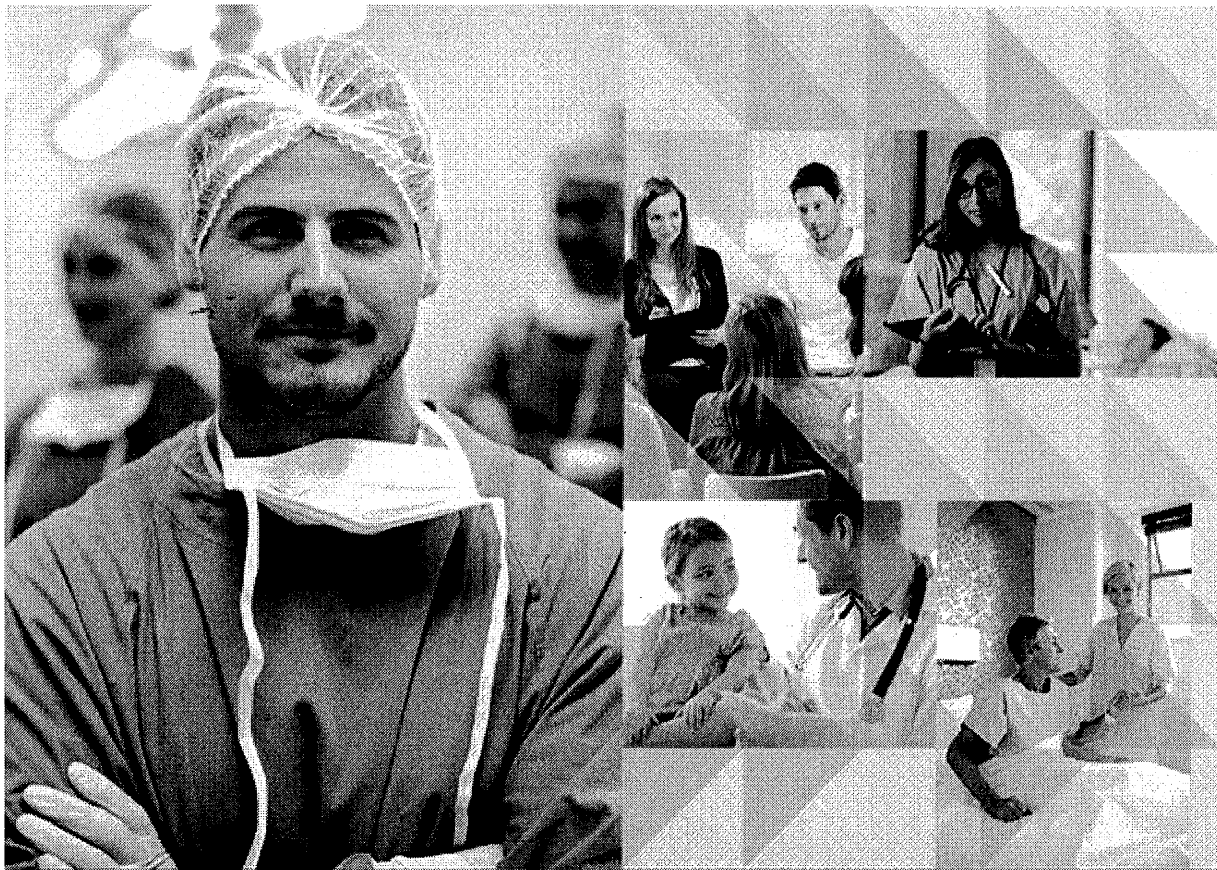
Gavin H. Carmichael, MBA, FACHE  
Chief Operating Officer (COO)  
Alaska Psychiatric Institute  
907-269-7106  
[gavin.carmichael@alaska.gov](mailto:gavin.carmichael@alaska.gov)

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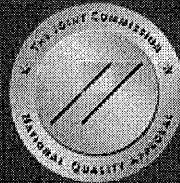
## **EXHIBIT J**



Organizations that have achieved  
The Gold Seal of Approval® from  
The Joint Commission®



# Quality Report



**Exhibit J**  
**Page 1 of 3**



# Alaska Psychiatric Institute

HCO ID: 1526  
3700 Piper Street  
Anchorage, AK, 99508-4677  
(907) 269-7100  
[hss.state.ak.us/dbh/API/default.htm](http://hss.state.ak.us/dbh/API/default.htm)

## Summary of Quality Information

### Accreditation Programs

#### View Accreditation History



**Accreditation**  
**Hospital Decision**  
Accredited

**Effective**  
**Date**  
12/15/2018

**Last Full Survey**  
**Date**  
12/14/2018

**Last On-Site Survey**  
**Date**  
1/29/2019

### Sites

#### Alaska Psychiatric Institute

3700 Piper Street  
Anchorage, AK, 99508-4677

#### Available Services

- Behavioral Health (24-hour Acute Care/Crisis Stabilization - Adult )
- Behavioral Health (24-hour Acute Care/Crisis Stabilization - Child/Youth )
- Community Integration (Non 24 Hour Care )
- Family Support (Non 24 Hour Care )
- Peer Support (Non 24 Hour Care )

## National Patient Safety Goals and National Quality Improvement Goals

### Symbol Key

- This organization achieved the best possible results
- This organization's performance is above the target range/value
- This organization's performance is similar to the target range/value
- This organization's performance is below the target range/value
- This measure is not applicable for this organization
- Not displayed

### Measures Footnote Key

1. The measure or measure set was not reported.



2. The measure set does not have an overall result.
3. The number is not enough for comparison purposes.
4. The measure meets the Privacy Disclosure Threshold rule.
5. The organization scored above 90% but was below most other organizations.
6. The measure results are not statistically valid.
7. The measure results are based on a sample of patients.
8. The number of months with measure data is below the reporting requirement.
9. The measure results are temporarily suppressed pending resubmission of updated data.
10. Test Measure: a measure being evaluated for reliability of the individual data elements or awaiting National Quality Forum Endorsement.
11. There were no eligible patients that met the denominator criteria.





The Joint Commission only reports measures endorsed by the **National Quality Forum**.

\* This information can also be viewed at **Hospital Compare**.

\*\* Indicates per 1000 hours of patient care.

\*\*\* The measure was not in effect for this quarter.

---- Null value or data not displayed.

Hospital	<b><u>2018 National Patient Safety Goals</u></b>	<b>Nationwide Comparison:</b> 	<b>Statewide Comparison:</b> 
	<b>Reporting Period: July 2017 - June 2018</b> <b><u>National Quality Improvement Goals:</u></b>		
	<b><u>Hospital-Based Inpatient Psychiatric Services</u></b>	<b>National Comparison:</b>  <sup>2</sup>	<b>Statewide Comparison:</b>  <sup>2</sup>

### **New Changes to Quarterly Measure**

**Download Quarterly Measure Results**

The Joint Commission only reports measures endorsed by the **National Quality Forum**.

\* State results are not calculated for the National Patient Safety Goals.

**EXHIBIT K**



# Feasibility Study of the Privatization of the Alaska Psychiatric Institute

Final Report

February 23, 2017

**PCG Health**  
Public Focus. Proven Results.

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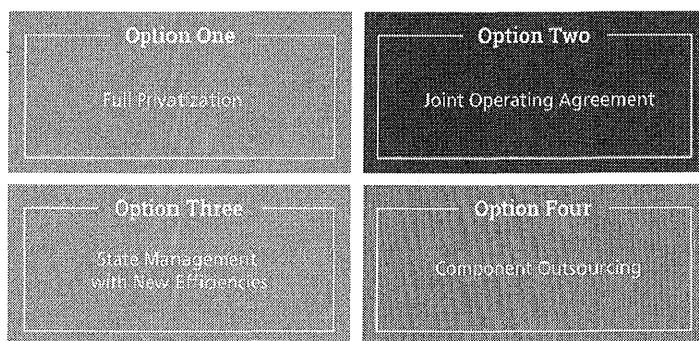
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## 1.0. EXECUTIVE SUMMARY

The Department of Health and Social Services (DHSS), in cooperation with the Alaska Mental Health Trust Authority (AMHTA), contracted with Public Consulting Group, Inc. (PCG) to conduct a privatization feasibility study of the Alaska Psychiatric Institute (API), the safety net provider of inpatient psychiatric care for the entire state and Alaska's only state-run psychiatric hospital. The goal of this study was to determine whether privatization of the facility could serve as a viable means for improving service delivery at the hospital and whether privatization has the potential to generate cost savings to the State without diminishing the quality of care delivered by the hospital.

This study offers a comprehensive analysis of privatization's estimated costs and benefits to the State, and encompasses a review of the State's legal obligations, estimated financial savings, service delivery efficiencies, enhanced quality of care and patient outcomes, and possible impacts on other aspects of Alaska's behavioral health system, including its correctional system and network of community service providers. PCG's study also evaluates the feasibility of privatizing API within a broader context of recent state hospital privatization efforts across the country, along with additional research on privatization outcomes in other types of facilities.

PCG developed four major options to consider for privatizing API. **Full Privatization** involves a private contractor assuming all operational aspects of API. The State would retain ownership of API's land and capital assets, and would either lease the facility to the contractor or hire the private provider as a property manager. In this option, the State's responsibilities in managing API would be restricted to its role as a contract administrator, providing oversight and monitoring the contractor's performance.



As a variation of full privatization, a **Joint Operating Agreement** does not differ substantially from the first option in estimated financial impact or responsibility for service delivery, but sets up privatization on a legal basis distinct from full privatization, in which privatization would be achieved by creating a new legal entity through an agreement between a private provider and DHSS, implemented either as a public corporation similar to AMHTA, or a 501 (C)(3) private, non-profit corporation.

The third option, **State Management with New Efficiencies**, is not so much a privatization option as an alternative to privatization that considers the impact of implementing the changes in staffing and business and service delivery process that would likely occur under a private operator, but assuming continued State management. This option explores what sorts of efficiencies can be achieved within the present management structure, without taking on the risks involved in the contracting process.









The final option, **Component Outsourcing**, analyzes individual components of the hospital that could be outsourced without diffusing administrative responsibilities or fragmenting service delivery or hospital operations. In each of the Component Outsourcing models developed by PCG, the State would retain overall operational responsibilities, but would contract out some or all of the facility's service delivery and operational functions. Noting that some functions, such as food services, are already contracted out to private vendors, PCG identified five distinct hospital components for further analysis:

- *Communication Center*: the hospital's front desk, providing security and reception functions;
- *Facility and Material Management*: the hospital's maintenance and environmental services staff;
- *Psychiatric and Medical Services*: the hospital's psychiatry and other physician personnel;
- *Nursing Services*: Registered Nurse (RN), Psychiatric Nurse Assistant (PNA) and nursing administrators;



- *Comprehensive Outsourcing*: virtually all of the hospital's non-administrative personnel.

The table below summarizes PCG's findings and recommendations for each of the privatization options developed for cost-benefit analysis:

Privatization Option	Feasibility	Findings and Recommendations
<b>1: Full Privatization</b>		Cost-benefit analysis revealed that, even after significant staff reduction, when all transition costs, contract monitoring costs, and provider margins are considered, this option proves to be more expensive to the state over a likely 5-year contract period. The additional staff reductions needed for budget neutrality would likely diminish the quality of service delivery.
<b>2: Joint Operating Agreement</b>		As a variation of full privatization, this option failed to generate cost savings for the same reasons.
<b>3: State Management</b>		Cost-benefit analysis showed that implementing greater efficiencies in administrative functions and nursing staffing patterns could deliver the greatest amount of cost savings of all the options.
<b>4a: Communication Center</b>		While this option involves relatively few hospital personnel, expected changes to compensation and the need for fewer staff under a private contractor would yield the highest percentage of savings for any of the options. These services could also be supplied by a viable marketplace of competing vendors.
<b>4b: Facility and Material Management</b>		This option involves roughly a tenth of hospital personnel and appears to deliver only modest cost savings. However, like security services, these maintenance and environmental services can be readily procured from a viable marketplace of vendors.
<b>4c: Psychiatric and Medical Services</b>		Unlike many categories of hospital staff, levels for psychiatric and medical staff are not typically reduced under privatization, nor is their compensation significantly decreased. In many cases, private entities will increase compensation to better support recruitment and retention of these scarce personnel. While these changes may improve service delivery, they do not yield cost savings. Aside from the potential for increased cost, PCG also cautions against privatizing these services due to concerns over a lack of clear providers, aside from locum tenens agencies.
<b>4d: Nursing Services</b>		From a fiscal perspective, nursing services are a potentially fruitful area for privatization, due to the fact that nursing staff make up 58% of all API personnel, with the greatest potential for savings through staff reductions and changes to benefits and compensation levels. While cost-benefit analysis showed that modest staff reductions—and associated cost savings—could be achieved without diminishing service delivery, it is not clear that a private provider could significantly lower overall compensation levels for nursing personnel without affecting recruitment and retention. Nor is it clear that a robust marketplace for these services exists in Alaska. Many of the identified improvements in nursing services could also be implemented under current state management.
<b>4e: Comprehensive Outsourcing</b>		Cost-benefit analysis revealed that this option failed to produce cost savings, making it infeasible on fiscal grounds. The higher cost was due largely to expense of privatizing psychiatric services.

The study details the service delivery benchmarks and cost estimation methodologies used by PCG to arrive at our recommendations. For the most part, our benchmarks for measuring the potential impact of staffing reductions on service delivery were derived from a combination of industry standards on appropriate nursing ratios as well as a series of staffing comparisons with other small, acute care peer hospitals. These benchmarking methods are discussed in detail in Section 7.2.

## **EXHIBIT L**





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## STATE TO STUDY API, MISUNDERSTANDS CONTRACT

Published: Mar. 15, 2019

Dear ASEA Members at API:

Department of Health and Social Services Deputy Commissioner Albert Wall called me today. He said at the advice of the DHSS attorney, he is extending dates of the WellPath Contract so that DHSS can do a feasibility study (under the collective bargaining agreement between ASEA and the State of Alaska, the State must do a feasibility study before it makes a "decision to contract out work"). This extension includes moving the date of completion of Phase 1, Startup, from April 15 to June 15, 2019. Additionally, DHSS is extending Phase 2, where WellPath takes over the complete operation of API, from July 1 to September 1, 2019. Deputy Commissioner Wall told me that these extensions were necessary to comply with our collective bargaining agreement.

In response, I told Deputy Commissioner Wall that under Article 13 of our collective bargaining agreement, the feasibility study is required **before** the State makes a decision to contract out. In other words, even though the State may do a feasibility study it is still violating our contract because it signed a contract with WellPath before doing the study. I further explained that once the feasibility study is done, the contract requires the State to give ASEA the opportunity to provide an alternate plan to privatization and that must be given fair consideration before the State can even take any bids from a private contractor. Given that the State had already signed a contract with WellPath, I explained ASEA simply wasn't being given a fair opportunity to submit an alternate plan. I concluded our discussion with a recommendation to Deputy Commissioner Wall that he go back to his attorneys and tell them that the contract with WellPath is illegal and that the State needs to start over.

I want to thank you all for being vigilant throughout this whole illegal process. Your attention to detail and the information you have provided to the public, to ASEA and to the legislature about this what is going on at

API caused this delay to happen. Again, thank you for all you do. While the delay give us more time, this fight is not yet over. Please stay vigilant and ASEA Strong!

ASEA will continue updates as we get more information. Please let us know if you have any questions.

In Solidarity,

Jake Metcalfe

Executive Director

ASEA/AFSCME Local 52

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